GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2012 EXTRAORDINARY SESSION

HOUSE BILL NO. 1

AS ENACTED

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

AN ACT relating to controlled substances and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) (a) As used in this section, "pain management facility" means a facility where the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances and:

1. The facility's primary practice component is the treatment of pain; or

2. The facility advertises in any medium for any type of pain management services.

(b) "Pain management facility" does not include the following:

1. A hospital, including a critical access hospital, as defined in KRS Chapter 216, a facility owned by the hospital, or the office of a hospital-employed physician;

2. A school, college, university, or other educational institution or program to the extent that it provides instruction to individuals preparing to practice as physicians, podiatrists, dentists, nurses, physician assistants, optometrists, or veterinarians;

3. A hospice program or residential hospice facility licensed under KRS Chapter 216B;

4. An ambulatory surgical center licensed under KRS Chapter 216B; or

5. A long-term-care facility as defined in KRS 216.510.

(2) Only a physician having a full and active license to practice medicine issued under KRS Chapter 311 shall have an ownership or investment interest in a pain management facility. Credit extended by a financial institution as defined in KRS 136.500 to the facility shall not be deemed an investment interest under this subsection. This ownership or investment requirement shall not be enforced

against any pain management facility existing and operating on the date of this Act being approved by the Governor or otherwise becoming a law unless there is an administrative sanction or criminal conviction relating to controlled substances imposed on the facility or any person employed by the facility for an act or omission done within the scope of the facility's licensure or the person's employment.

(3) Regardless of the form of facility ownership, beginning on the effective date of this Act at least one (1) of the owners or an owner's designee who is a physician employed by and under the supervision of the owner shall be physically present practicing medicine in the facility for at least fifty percent (50%) of the time that patients are present in the facility, and that physician owner or designee shall:

(a) Hold a current subspecialty certification in pain management by a member board of the American Board of Medical Specialties, or hold a current certificate of added qualification in pain management by the American Osteopathic Association Bureau of Osteopathic Specialists;

(b) Hold a current subspecialty certification in hospice and palliative medicine by a member board of the American Board of Medical Specialties, or hold a current certificate of added qualification in hospice and palliative medicine by the American Osteopathic Association Bureau of Osteopathic Specialists;

(c) Hold a current board certification by the American Board of Pain Medicine;

(d) Hold a current board certification by the American Board of Interventional Pain Physicians; or

(e) Have completed an accredited residency or fellowship in pain management.

(4) A pain management facility shall accept private health insurance as one of the facility's allowable forms of payment for goods or services provided and shall

accept payment for services rendered or goods provided to a patient only from the patient or the patient's insurer, guarantor, spouse, parent, guardian, or legal custodian.

(5) If the pain management facility is operating under a license issued by the cabinet, the cabinet shall include and enforce the provisions of this section as additional conditions of that licensure. If the pain management facility is operating as the private office or clinic of a physician under KRS 216B.020(2), the Kentucky Board of Medical Licensure shall enforce the provisions of this section. The provisions of this subsection shall not apply to the investigation or enforcement of criminal liability.

(6) Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Reporting agency" includes:

1. The Department of Kentucky State Police;

2. The Office of the Attorney General;

3. The Cabinet for Health and Family Services; and

4. The applicable state licensing board; and

(b) "State licensing board" means:

1. The Kentucky Board of Medical Licensure;

2. The Kentucky Board of Nursing;

3. The Kentucky Board of Dentistry;

4. The Kentucky Board of Optometric Examiners;

5. The State Board of Podiatry; and

6. Any other board that licenses or regulates a person who is entitled to

prescribe or dispense controlled substances to humans.

(2) (a) When a reporting agency or a law enforcement agency receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance it may, to the extent otherwise allowed by law, send a copy of the report within three (3) business days to every other reporting agency.

(b) A county attorney or Commonwealth's attorney shall notify the Office of the Attorney General and the appropriate state licensing board within three (3) business days of an indictment or a waiver of indictment becoming public in his or her jurisdiction charging a licensed person with a felony offense relating to the manufacture of, trafficking in, prescribing, dispensing, or possession of a controlled substance.

(3) Each state licensing board shall by September 1, 2012, establish the following by administrative regulation for those licensees authorized to prescribe or dispense controlled substances:

(a) Mandatory prescribing and dispensing standards related to controlled substances;

(b) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour supply of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone unless the dispensing is done as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(c) A procedure for temporarily suspending, limiting, or restricting a license held by a named licensee where a substantial likelihood exists to believe that the continued unrestricted practice by the named licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public;

(d) A procedure for the expedited review of complaints filed against their

licensees pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances that is designed to commence an investigation within seven (7) days of a complaint being filed and produce a charging decision by the board on the complaint within one hundred twenty (120) days of the receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation;

(e) The establishment and enforcement of licensure standards that conform to the following:

1. A permanent ban on licensees and applicants convicted after the effective date of this Act in this state or any other state of any felony offense relating to controlled substances from prescribing or dispensing a controlled substance;

2. Restrictions short of a permanent ban on licensees and applicants convicted in this state or any other state of any misdemeanor offense relating to prescribing or dispensing a controlled substance;

3. Restrictions mirroring in time and scope any disciplinary limitation placed on a licensee or applicant by a licensing board of another state if the disciplinary action results from improper, inappropriate, or illegal prescribing or dispensing of controlled substances; and

4. A requirement that licensees and applicants report to the board any conviction or disciplinary action covered by this subsection with appropriate sanctions for any failure to make this required report;

(f) A procedure for the continuous submission of all disciplinary and other reportable information to the National Practitioner Data Bank of the United States Department of Health and Human Services;

(g) If not otherwise required by other law:

1. A process for obtaining a national and state fingerprint-supported criminal record check conducted by the Federal Bureau of Investigation or by the Department of Kentucky State Police on an applicant for initial licensing; and

2. Submitting a query on each applicant for licensure to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant; and

(h) Continuing education requirements beginning with the first full educational year occurring after July 1, 2012, that specify that at least seven and one-half percent (7.5%) of the continuing education required of the licensed practitioner relate to the use of the electronic monitoring system established in Section 4 of this Act, pain management, or addiction disorders.

(4) A state licensing board shall employ or obtain the services of a specialist in the treatment of pain and a specialist in drug addiction to evaluate information received regarding a licensee's prescribing or dispensing practices related to controlled substances if the board or its staff does not possess such expertise, to ascertain if the licensee under investigation is engaging in improper, inappropriate, or illegal practices.

(5) Any statute to the contrary notwithstanding, no state licensing board shall require that a grievance or complaint against a licensee relating to controlled substances be sworn to or notarized, but the grievance or complaint shall identify the name and address of the grievant or complainant, unless the board by administrative regulation authorizes the filing of anonymous complaints. Any such authorizing administrative regulation shall require that an anonymous complaint or grievance be accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that

a reasonable probability exists that the complaint or grievance is meritorious.

(6) Every state licensing board shall cooperate to the maximum extent permitted by law with all state, local, and federal law enforcement agencies, and all professional licensing boards and agencies, state and federal, in the United States or its territories in the coordination of actions to deter the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) Prior to the initial prescribing or dispensing of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone to a human patient, a practitioner shall:

(a) Obtain a complete medical history and conduct a physical examination of the patient and document the information in the patient's medical record;

(b) Query the electronic monitoring system established in Section 4 of this Act for all available data on the patient;

(c) Make a written treatment plan stating the objectives of the treatment and further diagnostic examinations required;

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate, including the risk of tolerance and drug dependence; and

(e) Obtain written consent for the treatment.

(2) The practitioner shall conduct, at reasonable intervals based on the patient's individual circumstances, the course of treatment and provide to the patient any new information about the treatment. The course of treatment shall include the practitioner querying the electronic monitoring system established in Section 4 of this Act no less than once every three (3) months for all available data on the

patient and reviewing that data before issuing any new prescription or refills for the patient for any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone.

(3) For each patient for whom a practitioner prescribes any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone, the practitioner shall keep accurate, readily accessible, and complete medical records which include:

(a) Medical history and physical examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed or dispensed;

(h) Instructions and agreements; and

(i) Periodic reviews of the patient's file.

(4) This section shall not apply to:

(a) A licensee administering a controlled substance or anesthesia immediately prior to or during surgery;

(b) A licensee administering a controlled substance necessary to treat a patient in an emergency situation:

1. At the scene of an emergency;

2. In a licensed ground or air ambulance; or

3. In the emergency department or intensive care unit of a licensed hospital;

(c) A licensed pharmacist or other person licensed by the Kentucky Board of

Pharmacy to dispense drugs or to a licensed pharmacy;

(d) A licensee prescribing or dispensing a controlled substance for a hospice patient when functioning within the scope of a hospice program or hospice inpatient unit licensed under KRS Chapter 216B. The hospice program shall maintain a plan of care in accordance with federal regulations;

(e) The prescribing of a Schedule III, IV, or V controlled substance by a licensed optometrist to a patient in accordance with the provisions of KRS 320.240; or

(f) The prescribing of a three (3) day supply of a Schedule III controlled substance following the performance of oral surgery by a dentist licensed pursuant to KRS Chapter 313.

➔Section 4. KRS 218A.202 is amended to read as follows:

(1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy. ***The cabinet may contract for the design, upgrade, or operation of this system if the contract preserves all of the rights, privileges, and protections guaranteed to Kentucky citizens under this chapter and the contract requires that all other aspects of the system be operated in conformity with the requirements of this or any other applicable state or federal law.***

(2) A practitioner or a pharmacist ***authorized to prescribe or dispense controlled substances to humans shall register with the cabinet to use the system provided for in this section and shall maintain such registration continuously during the practitioner's or pharmacist's term of licensure and*** shall not have to pay a fee or tax specifically dedicated to the operation of the system.

(3) Every dispenser within the Commonwealth ***who is licensed to prescribe or dispense a controlled substance other than by the Board of Pharmacy,*** or any other dispenser who has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy, shall report to the Cabinet for Health and Family Services the data required by this section~~[in a timely manner]~~ as prescribed by the ***cabinet by administrative regulation until July 1, 2013, at which time the report shall be filed with the cabinet within one (1) day of the dispensing,***~~[cabinet]~~ except that reporting shall not be required for:

(a) A drug***, other than any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone,*** administered directly to a patient; or

(b) A drug***, other than any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone,*** dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.

(4) Data for each controlled substance that is dispensed shall include but not be limited to the following:

(a) Patient identifier;

(b) ***National drug code of the*** drug dispensed;

(c) Date of dispensing;

(d) Quantity dispensed;

(e) Prescriber; and

(f) Dispenser.

(5) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for

data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.

(6) The Cabinet for Health and Family Services shall only disclose data to persons and entities authorized to receive that data under this section. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this section. The Cabinet for Health and Family Services shall be authorized to provide data to:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(b) ***Employees of the Office of the Inspector General of the Cabinet for Health and Family Services who have successfully completed training for the electronic system and who have been approved to use the system,*** ~~[a]~~ Kentucky ***Commonwealth's attorneys and assistant Commonwealth's attorneys, county attorneys and assistant county attorneys, a*** peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;

(c) A state-operated Medicaid program ***in conformity with subsection (7) of this section***;

(d) A properly convened grand jury pursuant to a subpoena properly issued for the records;

(e) A practitioner or pharmacist, ***or employee of the practitioner's or pharmacist's practice acting under the specific direction of the practitioner or pharmacist,*** who requests information and certifies that the requested information is for the purpose of:

1. Providing medical or pharmaceutical treatment to a bona fide current ***or prospective*** patient; ***or***

2. Reviewing and assessing the individual prescribing or dispensing patterns of the practitioner or pharmacist or to determine the accuracy and completeness of information contained in the monitoring system;

(f) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:

1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing ***or dispensing*** practices;
2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing ***or dispensing*** may be occurring; or
3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing ***or dispensing*** may be occurring in that area;

(g) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced practice registered nurse who is:

1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing ***or dispensing*** practices;
2. Associated in a partnership or other business entity with an advanced

practice registered nurse who is already under investigation by the Board of Nursing for improper prescribing practices;

3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing ***or dispensing*** may be occurring; or

4. In a designated geographic area for which a report on a physician or another advanced practice registered nurse in that area indicates a substantial likelihood that inappropriate prescribing ***or dispensing*** may be occurring in that area; or

(h) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.

(7) The Department for Medicaid Services ***shall***~~[may]~~ use any data or reports from the system for the purpose of identifying Medicaid ***providers or*** recipients whose ***prescribing, dispensing, or*** usage of controlled substances may be:

(a) Appropriately managed by a single outpatient pharmacy or primary care physician;

(b) Indicative of improper, inappropriate, or illegal prescribing or dispensing practices by a practitioner or drug seeking by a Medicaid recipient.

(8) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except ***as provided in this section, in another statute, or*** by order of a court of competent jurisdiction and only to a person or entity authorized to receive the data or the report under this section, except that:

(a) A ***person***~~[peace officer]~~ specified in subsection (6)(b) of this section who is

authorized to receive data or a report may share that information with ***any*** other ***persons***~~[peace officers]~~ specified in subsection (6)(b) of this section authorized to receive data or a report if the ***persons***~~[peace officers]~~ specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each~~[law enforcement]~~ agency engaged in the investigation;~~[and]~~

(b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in subsection (6)(a) of this section, or with a law enforcement officer designated in subsection (6)(b) of this section;~~[and]~~

(c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B***; and***

(d) A practitioner, pharmacist, or employee who obtains data under subsection (6)(e) of this section may share the report with the patient or person authorized to act on the patient's behalf and place the report in the patient's medical record, with that individual report then being deemed a medical record subject to disclosure on the same terms and conditions as an ordinary medical record in lieu of the disclosure restrictions otherwise imposed by this section.

(9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(b) of this section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for

which the patient is being treated.

(10) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

(11) Intentional failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class ***B***~~[A]~~ misdemeanor for the first offense and a Class ***A misdemeanor***~~[D felony]~~ for each subsequent offense.

(12) Intentional disclosure of transmitted data to a person not authorized by subsection (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class ***B misdemeanor***~~[D felony]~~ for the first offense and a Class ***A misdemeanor***~~[C felony]~~ for each subsequent offense.

(13) ***(a)*** The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, ***may***~~[shall]~~ submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot ***or continuing*** project to study***, create, or maintain*** a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances.

(b) The pilot project shall:

1.~~[(a)]~~ Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and

2.~~[(b)]~~ Study the use of an interactive system that includes a relational data base with query capability.

(c) Funding to create or maintain a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances may be sought for a statewide system or for a system covering any geographic portion or

portions of the state.

(14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.

(15) The Cabinet for Health and Family Services may***, by promulgating an administrative regulation,*** limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.

(16) (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.

(b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.

(c) The cabinet shall work with the Justice and Public Safety Cabinet for the development of a continuing education program for law enforcement officers about the purposes and ***uses***~~[users]~~ of the electronic system for monitoring established in this section.

(17) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with this section, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser. The licensing board shall treat the notification as a complaint against the licensee.

(18) The cabinet shall promulgate administrative regulations to implement the provisions of this section. Included in these administrative regulations shall be an error resolution process allowing a patient to whom a report had been disclosed under subsection (8) of this section to request the correction of inaccurate information contained in the system relating to that patient.

➔Section 5. KRS 218A.240 is amended to read as follows:

(1) All police officers and deputy sheriffs directly employed full-time by state, county, city, urban-county, or consolidated local governments, the Department of Kentucky State Police, the Cabinet for Health and Family Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

(2) For the purpose of enforcing the provisions of this chapter, the designated agents of the Cabinet for Health and Family Services shall have the full power and authority of peace officers in this state, including the power of arrest and the authority to bear arms, and shall have the power and authority to administer oaths; to enter upon premises at all times for the purpose of making inspections; to seize evidence; to interrogate all persons; to require the production of prescriptions, of books, papers, documents, or other evidence; to employ special investigators; and to expend funds for the purpose of obtaining evidence and to use data obtained under KRS 218A.202(7) in any administrative proceeding before the cabinet.

(3) The Kentucky Board of Pharmacy, its agents and inspectors, shall have the same powers of inspection and enforcement as the Cabinet for Health and Family Services.

(4) Designated agents of the Cabinet for Health and Family Services and the Kentucky Board of Pharmacy are empowered to remove from the files of a pharmacy or the

custodian of records for that pharmacy any controlled substance prescription or other controlled substance record upon tendering a receipt. The receipt shall be sufficiently detailed to accurately identify the record. A receipt for the record shall be a defense to a charge of failure to maintain the record.

(5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.

(a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.

(b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.

(c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his or her costs, including a reasonable attorney's fee.

(d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.420, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his or her percentage of the funds shall go to the agency initiating the forfeiture action.

(6) The Cabinet for Health and Family Services shall make or cause to be made examinations of samples secured under the provisions of this chapter to determine whether any provision has been violated.

(7) (a) The Cabinet for Health and Family Services shall ***proactively*** use the data

compiled in the electronic system created in KRS 218A.202 for investigations, research, statistical analysis, and educational purposes and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a ***state licensing*** board ***listed in Section 2 of this Act***~~[responsible for the licensure, regulation, or discipline of each practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances,]~~ if a report or analysis conducted under this subsection indicates that further investigation about ***improper,*** inappropriate or ***illegal***~~[unlawful]~~ prescribing or dispensing may be necessary by the board. ***The board shall consider each report and may, after giving due consideration to areas of practice, specialties, board certifications, and appropriate standards of care, request and receive a follow-up report or analysis containing relevant information as to the prescriber or dispenser and his or her patients.***

(b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure, ***the Board of Nursing, the Office of Drug Control Policy,*** and the Board of Pharmacy, to be used to generate ***public*** trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850.~~[~~

~~(c)]~~The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system. ***Except as provided in subsection (8) of this section, these trend reports shall not identify an individual prescriber, dispenser, or patient.***~~[~~

~~(d)]~~Peace officers authorized to receive data under KRS 218A.202 may request

trend reports not specifically published pursuant to ***this*** paragraph~~[(c) of this subsection. A report under this paragraph may be based upon the criteria developed under paragraph (b) of this subsection or upon any of the data collected pursuant to KRS 218A.202(4),]~~ except that the report shall not identify an individual prescriber, dispenser, or patient.

~~[(c) No trend report generated under this subsection shall identify an individual prescriber, dispenser, or patient.]~~

(8) If the cabinet deems it to be necessary and appropriate, upon the request of a state licensing board listed in Section 2 of this Act, the cabinet shall provide the requesting board with the identity of prescribers, dispensers, and patients used to compile a specific trend report.

(9) Any hospital or other health care facility may petition the cabinet to review data from the electronic system specified in Section 4 of this Act as it relates to employees of that facility to determine if inappropriate prescribing or dispensing practices are occurring. The cabinet may initiate any investigation in such cases as he or she determines is appropriate, and may request the assistance from the hospitals or health care facilities in the investigation.

➔Section 6. KRS 218A.245 is amended to read as follows:

(1) The secretary of the Cabinet for Health and Family Services may enter into reciprocal agreements ***or a contract, either directly*** with any other state or states of the United States ***or with an organization administering the exchange of interstate data on behalf of the prescription monitoring program of one (1) or more states,*** to share prescription drug monitoring information if the other state's prescription drug monitoring program ***or the organization's data exchange program*** is compatible with the program in Kentucky. If the secretary elects to evaluate the prescription drug monitoring program of another state ***or organization*** as authorized by this section, priority shall be given to a state that is contiguous with

the borders of the Commonwealth ***or an organization that offers connectivity with a contiguous state***.

(2) In determining compatibility, the secretary shall consider:

(a) The essential purposes of the program and the success of the program in fulfilling those purposes;

(b) The safeguards for privacy of patient records and its success in protecting patient privacy;

(c) The persons authorized to view the data collected by the program;

(d) The schedules of controlled substances monitored;

(e) The data required to be submitted on each prescription ***or dispensing***;

(f) Any implementation criteria deemed essential for a thorough comparison; and

(g) The costs and benefits to the Commonwealth in mutually sharing particular information available in the Commonwealth's database with the program under consideration.

(3) The secretary shall review any agreement on an annual basis to determine its continued compatibility with the Kentucky prescription drug monitoring program.

(4) The secretary shall prepare an annual report to the Governor and the Legislative Research Commission that summarizes any agreement under this section and that analyzes the effectiveness of that agreement in monitoring the ***prescribing and*** dispensing of controlled substances in the Commonwealth.

(5) Any agreement between the cabinet and another state ***or organization*** shall prohibit the sharing of information about a Kentucky resident, practitioner, pharmacist, or other prescriber ***or dispenser*** for any purpose not otherwise authorized by this section or KRS 218A.202.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 72 IS CREATED TO READ AS FOLLOWS:

(1) Unless another cause of death is clearly established, in cases requiring a post-

mortem examination under KRS 72.025 the coroner or medical examiner shall take a blood sample and have it tested for the presence of any controlled substances which were in the body at the time of death.

(2) If a coroner or medical examiner determines that a drug overdose is the cause of death of a person, he or she shall provide notice of the death to:

(a) The state registrar of vital statistics and the Department of Kentucky State Police. The notice shall include any information relating to the drug that resulted in the overdose. The state registrar of vital statistics shall not enter the information on the deceased person's death certificate unless the information is already on the death certificate; and

(b) The licensing board for the individual who prescribed or dispensed the medication, if known. The notice shall include any information relating to the drug that resulted in the overdose, including the individual authorized by law to prescribe or dispense drugs who dispensed or prescribed the drug to the decedent.

This subsection shall not apply to reporting the name of a pharmacist who dispensed a drug based on a prescription.

(3) The state registrar of vital statistics shall report, within five (5) business days of the receipt of a certified death certificate or amended death certificate, to the Division of Kentucky State Medical Examiners Office, any death which has resulted from the use of drugs or a drug overdose.

(4) The Justice and Public Safety Cabinet in consultation with the Kentucky State Medical Examiners Office shall promulgate administrative regulations necessary to administer this section.

➔Section 8. KRS 72.280 is amended to read as follows:

The Office of Drug Control Policy, in cooperation with the Division of Kentucky State Medical Examiners Office and its laboratory services, shall prepare ***and publish on its***

Web site an annual ***public*** report to the secretary of the Justice Cabinet which includes***:***

(1) The number of drug-related deaths***;*** ~~[,]~~

(2) The decedent's age, race, and gender but not his or her name or address;

(3) The counties in which those deaths occurred***;*** ~~[, and]~~

(4) The ***scientific, trade,*** ~~[major categories]~~ or generic names of the drugs involved***; and***

(5) The method by which the drugs were obtained, when available.

➔Section 9. KRS 311.530 is amended to read as follows:

(1) There is hereby created in state government an independent board to be known as the State Board of Medical Licensure which shall exercise all medical and osteopathic licensure functions heretofore exercised by the State Board of Health. The offices of the board shall be maintained at such place as is designated by the board.

(2) The board shall consist of fifteen (15) members, including the commissioner of public health, the dean of the University of Kentucky College of Medicine, the vice dean for clinical affairs of the University of Louisville School of Medicine, the dean of the ***University of*** Pikeville ~~[College]~~ School of Osteopathic Medicine, and eleven (11) members appointed by the Governor.

(3) Of the Governor's appointees:

(a) One (1) member shall be a licensed osteopathic physician and shall be appointed from a list of three (3) names submitted by the Kentucky Osteopathic Association.

(b) Seven (7) members shall be licensed medical physicians and ***may*** ~~[shall]~~ be appointed from a list of three (3) names submitted for each position by the Kentucky Medical Association. ***In making appointments under this paragraph, the Governor shall ensure that the physician members represent different specialties from a broad cross section of the medical profession.***

(c) Three (3) members shall be citizens at large who are representatives of any

recognized consumer advocacy groups with an interest in the delivery of health care and are not associated with or financially interested in the practice or business regulated.

➔Section 10. KRS 314.121 is amended to read as follows:

(1) The Governor shall appoint a Board of Nursing consisting of sixteen (16) members:~~[:]~~

(a) Nine (9) members shall be registered nurses licensed to practice in the Commonwealth, ***with the Governor ensuring that the appointees represent different specialties from a broad cross-section of the nursing profession after soliciting and receiving nominations from recognized specialty state component societies***;

(b) Three (3) members shall be practical nurses licensed to practice in the Commonwealth;

(c) One (1) member shall be a nurse service administrator who is a registered nurse licensed to practice in the Commonwealth;

(d) One (1) member shall be engaged in practical nurse education who is a registered nurse licensed to practice in the Commonwealth; and

(e) Two (2) members shall be citizens at large, who are not associated with or financially interested in the practice or business regulated.

(2) Each appointment shall be for a term of four (4) years expiring on June 30 of the fourth year. The cycle for appointments and expiration of terms shall be as follows:

(a) The first year of the four (4) year cycle, the terms for three (3) registered nurses and one (1) licensed practical nurse shall expire;

(b) The second year of the four (4) year cycle, the terms for three (3) registered nurses and one (1) citizen at large shall expire;

(c) The third year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and the one (1) member engaged in

practical nurse education who is a registered nurse shall expire; and

(d) The fourth year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and one (1) citizen at large shall expire.

(3) (a) By March 1, the Kentucky Nurses Association shall submit to the Governor a list of members qualified for appointment as R.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments necessary by July 1.

(b) By March 1, Kentucky Licensed Practical Nurses Organization Incorporated shall submit to the Governor a list of names qualified for appointment as L.P.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments as necessary by July 1.

(c) By March 1 of the year in which the nurse service administrator's term shall expire, the Kentucky Organization of Nurse Executives, an affiliate of the Kentucky Hospital Association, shall submit to the Governor two (2) names of qualified individuals for appointment as the nurse service administrator from which list the Governor shall make an appointment as necessary by July 1.

(d) By March 1, the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc., shall submit to the Governor two (2) names of qualified individuals for appointments as its R.N. representative to the board, from which the Governor shall make an appointment by July 1.

(e) By March 1 of the year in which the Kentucky Association of Health Care Facilities representative's term shall expire, the Kentucky Association of Health Care Facilities shall submit to the Governor two (2) names of qualified individuals for appointment as its R.N. representative to the board, from which list the Governor shall make an appointment as necessary by July 1.

(f) Initially, the Governor shall appoint one (1) member to serve as the registered nurse who is engaged in practical nurse education to serve the term remaining according to the cycle specified in subsection (2) of this section. By August 1, 1996, Kentucky Licensed Practical Nurses Organization Incorporated shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by September 1, 1996. Thereafter, by March 1 of the year in which the practical nurse educator's term expires, Kentucky Licensed Practical Nurses Organization Incorporated shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by July 1.

(g) The Governor shall appoint two (2) members who shall be citizens at large, who are not associated with or financially interested in the practice or business regulated. The Governor shall make the appointments by July 1 of the year in which the citizen members' terms expire.

(4) A vacancy on the board shall be filled by the Governor as provided for under subsection (1) of this section.

(5) The Governor may remove any member from the board for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) Each R.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of nursing, and a registered nurse in this state. All shall have had at least five (5) years of experience in nursing, three (3) of which shall immediately precede such appointment. Five (5) members shall be engaged in nursing practice; three (3) shall be engaged in nursing education; one (1) shall be engaged in advanced practice registered nursing; and one (1) shall be in nursing administration.

(7) Each L.P.N. member of the board shall be a citizen of the United States, a resident

of Kentucky, a graduate of an approved school of practical nursing or its equivalent, licensed as a licensed practical nurse in this state, have at least five (5) years of experience in nursing, three (3) of which shall immediately precede this appointment, and be currently engaged in nursing practice.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

(1) A pharmacy located in Kentucky which has a robbery or theft of a controlled substance shall:

(a) Immediately following the robbery or discovery of the theft report the incident to a law enforcement agency serving the geographic area in which the pharmacy is located; and

(b) Within three (3) business days report that robbery or theft to the Department of Kentucky State Police.

(2) A pharmacy which has mailed or shipped a controlled substance to a location in Kentucky and learns that the mailing or shipment did not arrive shall within three (3) business days report that nonreceipt to:

(a) The Department of Kentucky State Police; and

(b) If applicable, the United States Postal Inspection Service.

(3) The reports required pursuant to subsections (1) and (2) of this section shall contain at a minimum, if known and applicable:

(a) The name, National Drug Code, and quantity of each controlled substance involved;

(b) A description of the circumstances of the loss;

(c) The names and contact information of any witnesses; and

(d) The name and description of any person suspected of committing the offense or causing the loss.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 218A IS CREATED

TO READ AS FOLLOWS:

The Prescription Monitoring Program compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

PURPOSE

The purpose of this interstate compact is to provide a mechanism for state prescription monitoring programs to securely share prescription data to improve public health and safety. This interstate compact is intended to:

A. Enhance the ability of state prescription monitoring programs, in accordance with state laws, to provide an efficient and comprehensive tool for:

1. Practitioners to monitor patients and support treatment decisions;

2. Law enforcement to conduct diversion investigations where authorized by state law;

3. Regulatory agencies to conduct investigations or other appropriate reviews where authorized by state law; and

4. Other uses of prescription drug data authorized by state law for purposes of curtailing drug abuse and diversion; and

B. Provide a technology infrastructure to facilitate secure data transmission.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Authentication" means the process of verifying the identity and credentials of a person before authorizing access to prescription data;

B. "Authorize" means the process by which a person is granted access privileges to prescription data;

C. "Bylaws" means those bylaws established by the interstate commission pursuant

to Article VIII for its governance, or for directing or controlling its actions and conduct;

D. "Commissioner" means the voting representative appointed by each member state pursuant to Article VI of this compact;

E. "Interstate commission" or "commission" means the interstate commission created pursuant to Article VI of this compact;

F. "Member state" means any state that has adopted a prescription monitoring program and has enacted the enabling compact legislation;

G. "Practitioner" means a person licensed, registered or otherwise permitted to prescribe or dispense a prescription drug;

H. "Prescription data" means data transmitted by a prescription monitoring program that contains patient, prescriber, dispenser, and prescription drug information;

I. "Prescription drug" means any drug required to be reported to a state prescription monitoring program and which includes but is not limited to substances listed in the federal Controlled Substances Act;

J. "Prescription Monitoring Program" means a program that collects, manages, analyzes, and provides prescription data under the auspices of a state;

K. "Requestor" means a person authorized by a member state who has initiated a request for prescription data;

L. "Rule" means a written statement by the interstate commission promulgated pursuant to Article VII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule;

M. "State" means any state, commonwealth, district, or territory of the United

States;

N. "Technology infrastructure" means the design, deployment, and use of both individual technology based components and the systems of such components to facilitate the transmission of information and prescription data among member states; and

O. "Transmission" means the release, transfer, provision, or disclosure of information or prescription data among member states.

ARTICLE III

AUTHORIZED USES AND RESTRICTIONS ON THE PRESCRIPTION DATA

A. Under the Prescription Monitoring Program compact a member state:

1. Retains its authority and autonomy over its prescription monitoring program and prescription data in accordance with its laws, regulations and policies;

2. May provide, restrict or deny prescription data to a requestor of another state in accordance with its laws, regulations and policies;

3. May provide, restrict or deny prescription data received from another state to a requestor within that state; and

4. Has the authority to determine which requestors shall be authorized.

B. Prescription data obtained by a member state pursuant to this compact shall have the following restrictions:

1. Be used solely for purposes of providing the prescription data to a requestor; and

2. Not be stored in the state's prescription monitoring program database, except for stored images, nor in any other database.

C. A state may limit the categories of requestors of another member state that will receive prescription data.

D. The commission shall promulgate rules establishing standards for requestor

authentication.

1. Every member state shall authenticate requestors according to the rules established by the commission.

2. A member state may authorize its requestors to request prescription data from another member state only after such requestor has been authenticated.

3. A member state that becomes aware of a requestor who violated the laws or regulations governing the appropriate use of prescription data shall notify the state that transmitted the prescription data.

ARTICLE IV

TECHNOLOGY AND SECURITY

A. The commission shall establish security requirements through rules for the transmission of prescription data.

B. The commission shall foster the adoption of open (vendor- and technology-neutral) standards for the technology infrastructure.

C. The commission shall be responsible for acquisition and operation of the technology infrastructure.

ARTICLE V

FUNDING

A. The commission, through its member states, shall be responsible to provide for the payment of the reasonable expenses for establishing, organizing and administering the operations and activities of the interstate compact.

B. The interstate commission may levy on and collect annual dues from each member state to cover the cost of operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual dues amount shall be allocated in an equitable manner and may consist

of a fixed fee component as well as a variable fee component based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states. Such a formula shall take into account factors including, but not limited to the total number of practitioners or licensees within a member state. Fees established by the commission may be recalculated and assessed on an annual basis.

C. Notwithstanding the above or any other provision of law, the interstate commission may accept non-state funding, including grants, awards and contributions to offset, in whole or in part, the costs of the annual dues required under Article V, Section B.

D. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member states.

E. The interstate commission shall keep accurate accounts of all receipts and disbursements subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited annually by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE VI

INTERSTATE COMMISSION

The member states hereby create the Interstate Prescription Monitoring Program Commission. The Prescription Monitoring Program compact shall be governed by an interstate commission comprised of the member states and not by a third-party group or federal agency. The activities of the commission are the formation of public policy and are a discretionary state function.

A. The commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. The commission shall consist of one (1) voting representative from each member state who shall be that state's appointed compact commissioner and who is empowered to determine statewide policy related to matters governed by this compact. The compact commissioner shall be a policymaker within the agency that houses the state's Prescription Monitoring Program.

C. In addition to the state commissioner, the state shall appoint a non-voting advisor who shall be a representative of the state Prescription Monitoring Program.

D. In addition to the voting representatives and non-voting advisor of each member state, the commission may include persons who are not voting representatives, but who are members of interested organizations as determined by the commission.

E. Each member state represented at a meeting of the commission is entitled to one vote. A majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the commission. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the commission, the appropriate appointing authority may delegate voting authority to another person from their state for a specified meeting. The bylaws may provide for meetings of the commission to be conducted by electronic communication.

F. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the

compacting states, shall call additional meetings.

G. The commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the commission, with the exception of rulemaking. During periods when the commission is not in session the executive committee shall oversee the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary.

H. The commission shall maintain a robust committee structure for governance (i.e., policy, compliance, education, technology, etc.) and shall include specific opportunities for stakeholder input.

I. The commission's bylaws and rules shall establish conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may exempt from disclosure information or official records that would adversely affect personal privacy rights or proprietary interests.

J. The commission shall provide public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The commission may close a meeting, or portion thereof, where it determines by a two-thirds (2/3) vote of the members present that an open meeting would be likely to:

1. Relate solely to the commission's internal personnel practices and procedures;

2. Discuss matters specifically exempted from disclosure by federal and state statute;

3. Discuss trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Discuss investigative records compiled for law enforcement purposes; or

7. Specifically relate to the commission's participation in a civil action or other legal proceeding.

K. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission.

ARTICLE VII

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

A. To oversee and maintain the administration of the technology infrastructure;

B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact, provided that no member state shall be required to create an advisory committee. The rules shall have the force and effect of statutory law and shall be binding in the member states to the extent and in the manner provided in this compact;

C. To establish a process for member states to notify the commission of changes to a state's prescription monitoring program statutes, regulations, or policies. This

applies only to changes that would affect the administration of the compact;

D. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions;

E. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

F. To establish and maintain one (1) or more offices;

G. To purchase and maintain insurance and bonds;

H. To borrow, accept, hire or contract for personnel or services;

I. To establish and appoint committees including, but not limited to, an executive committee as required by Article VI, Section G, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

J. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

K. To seek and accept donations and grants of money, equipment, supplies, materials, and services, and to utilize or dispose of them;

L. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

M. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

N. To establish a budget and make expenditures;

O. To adopt a seal and bylaws governing the management and operation of the interstate commission;

P. To report annually to the legislatures, Governors and Attorneys General of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission and shall be made publically available;

Q. To coordinate education, training and public awareness regarding the compact, its implementation and operation;

R. To maintain books and records in accordance with the bylaws;

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and

T. To provide for dispute resolution among member states.

ARTICLE VIII

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The interstate commission shall, by a majority of the members present and voting, within twelve (12) months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

1. Establishing the fiscal year of the interstate commission;

2. Establishing an executive committee, and such other committees as may be necessary for governing any general or specific delegation of authority or function of the interstate commission;

3. Providing procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

4. Establishing the titles and responsibilities of the officers and staff of the interstate commission; and

5. Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the

termination of the compact after the payment and reserving of all of its debts and obligations.

B. The interstate commission shall, by a majority of the members present, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate commission.

C. Executive Committee, Officers and Staff

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

a. Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;

b. Overseeing an organizational structure within, and appropriate procedures for the interstate commission to provide for the administration of the compact; and

c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the purpose of the interstate commission.

2. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as

secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

D. The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The interstate commission shall defend the executive director, its employees, and subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or

alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE IX

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority - The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect. Any rules promulgated by the commission shall not override the state's authority to govern prescription drugs or each state's Prescription Monitoring Program.

B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

ARTICLE X

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law but, shall not override the state's authority to govern prescription drugs or the state's Prescription Monitoring Program.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission.

3. The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the

interstate commission shall render a judgment or order void as to the interstate commission, this compact or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination - If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all dues, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

7. The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution

1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states.

2. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution as appropriate.

D. Enforcement

1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The interstate commission, may by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XI

MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state that has enacted Prescription Monitoring Program legislation through statute or regulation is eligible to become a member state of this compact.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than six (6) of the states. Thereafter it shall become effective and binding on a state upon enactment of the compact into law by that state. The Governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of the compact by all states.

C. The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XII

WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has

been given by the withdrawing state to the Governor of each other member state.

3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. Dissolution of the Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its

purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

B. Binding Effect of the Compact

1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

2. All agreements between the interstate commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

The Governor shall be the appointing authority for those appointments Kentucky is entitled to make under Section 12 of this Act, provided that all such appointments shall be subject to confirmation by the Senate.

➔Section 14. The Legislative Research Commission is requested to appoint a House Bill 1 Implementation Oversight Committee consisting of three senators and three representatives to monitor the implementation of this Act during the 2012 legislative interim.

➔Section 15. National Mortgage Settlement proceeds received by the Office of the Attorney General not to exceed $4,000,000 over the 2012-2014 fiscal biennium shall be transferred to the Cabinet for Health and Family Services, General Administration and Support budget unit, to be expended only for upgrades to and operation of the KASPER system in accordance with this Act. If sufficient funds from the National Mortgage Settlement proceeds are less than $4,000,000, then the balance necessary shall be deemed a necessary government expense and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705).

Speaker-House of Representatives

President of Senate

Attest: _____
Chief Clerk of House of Representatives

Approved _____
Governor

Date 4-24-12