

Privacy Issues and the PMP

Prescribers and pharmacists need to understand how the federal and state health information privacy laws, primarily the HIPAA privacy rule and Maine's confidentiality statute, affect their rights and obligations in the disclosure of information obtained from the PMP. You can feel comfortable that the routine disclosures you will face most on a daily basis - to patients, to other health care practitioners involved in the patient's care, to public and private payers, and to regulatory authorities - are permitted either by the PMP statute itself or by the privacy laws. The Maine Medical Association staff has provided responses to the most common questions a prescriber or pharmacist is likely to face.

Q: Can I share the information in a PMP report with the patient who is the subject of the report?

A: Yes, the statute creating the PMP specifically permits the patient's access to the information in the PMP reports. Also, under the federal and state privacy laws generally, a patient would have access to this information when it becomes part of the medical record.

Q: Can I share the information in a PMP report with other health care practitioners involved in the patient's care, including pharmacists?

A: Yes, the statute creating the PMP specifically permits any prescriber and any dispenser involved in the patient's care to have access to the information in the PMP reports. Also, under the federal and state privacy laws generally, a health care practitioner has broad authority to disclose protected health information with all other practitioners, including pharmacists, involved in the patient's care, even without the patient's consent.

Q: Can I share the information in a PMP report with representatives of the MaineCare program?

A: Yes, the PMP statute has been amended to permit access to PMP data by the Office of MaineCare Services (OMS) "for the purposes of managing the care of its members, monitoring the purchase of controlled substances by its members, avoiding duplicate dispensing of controlled substances and providing treatment pattern data." Also, under the federal and state privacy laws generally, a health care practitioner has authority to disclose protected health information to public and private payers for payment purposes and for utilization review activities.

Q: Can I share the information in a PMP report with regulatory or law enforcement personnel?

A: Yes, under some circumstances. The statute creating the PMP specifically permits the health care licensing boards, having a reasonable need for the information to support an investigation, to have access to PMP information. However, physician

practices are not permitted to disclose the information directly in most cases if it is an investigation or other activity in which the patient is the subject of the investigation. Also, under some circumstances, health care practitioners may, but are not required to, disclose information about a patient's potential diversion or abuse of a prescription medication to law enforcement personnel. Federal and state law allow disclosure if the practitioner believes it to be evidence of a crime that occurred on the covered entity's premises or limited information provided for the purpose of identifying or locating someone suspected of a crime. Disclosure may be limited if you are treating the patient for substance abuse. Because this is a complicated area of the law, it is recommended that you contact the Maine Medical Association or other attorney for further guidance.

Q: Can I be held legally responsible for doing nothing at all with the PMP report information?

A: Yes, possibly. A health care practitioner would have an obligation to take action on information about a patient suggesting substance abuse or diversion coming from the PMP, just as the practitioner would if the information came from another source. As a clinician, the practitioner has a professional, ethical obligation to address the patient care aspects of this information, which could include communicating with the patient, other prescribers and/or pharmacists involved. Also, a practitioner would have an administrative obligation to communicate with the MaineCare staff about the potential misuse of program resources as part of the practitioner's participation agreement with the program.

If you have more questions about your rights and obligations regarding the information in a PMP report, please contact Andrew MacLean, Deputy Executive Vice President & General Counsel of the Maine Medical Association at 207-622-3374, ext. 214 or amaclean@mainemed.com.

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