

## **218A.390 Prescription Monitoring Program Compact.**

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.

**Effective:** July 20, 2012

**History:** Created 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 12, effective July 20, 2012.

**Legislative Research Commission Note** (7/20/2012). 2012 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 12, Article XI, B. states that the compact contained in this statute "shall become effective and binding upon legislative enactment of the compact into law by no less than six states." At the time of the codification of this statute, that threshold had not been met.