

Corrected
October 18, 2016

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE enacting chapter 73., Jackson County Code, 1984, consisting of sections 7300., 7301., 7302., 7303., 7304., 7305., 7306., 7307., 7308., and 7309., relating to the establishment of a Prescription Drug Monitoring Program with a severability clause, a penalty provision, and an effective date.

ORDINANCE NO. 4912, October 17, 2016

INTRODUCED BY Crystal Williams, Theresa Galvin, Tony Miller, Garry J. Baker, Scott Burnett, Alfred Jordan, Dennis Waits, Dan Tarwater III, and Greg Grounds, County Legislators

WHEREAS, the State of Missouri is the only state in the union without a comprehensive statewide program that requires pharmacies to monitor or track the prescribing and dispensing of schedule II, III, and IV Controlled Substances within the state; and,

WHEREAS, after repeated consideration, the Missouri General Assembly has failed to enact legislation to establish such a statewide program as exists in the other forty-nine states; and,

WHEREAS, in the absence of a statewide program, Jackson County desires to enact an ordinance establishing a Prescription Drug Monitoring Program in its jurisdiction; and,

WHEREAS, the Legislature hereby approves the creation of the Prescription Drug Monitoring Program; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows:

Section A. Enacting Clause. Chapter 73., Jackson County Code, 1984, consisting of sections 7300., 7301., 7302., 7303., 7304., 7305., 7306., 7307., 7308., and 7309. is hereby enacted, to read as follows:

CHAPTER 73

PRESCRIPTION DRUG MONITORING PROGRAM

7300. Prescription Drug Monitoring Program Established.

There is established the Prescription Drug Monitoring Program ("PDMP"). The provisions of the PDMP shall not apply to persons licensed pursuant to chapter 340 of the Revised Statutes of Missouri (RSMo), which deals with the licensing of veterinarians, and shall be in effect throughout that portion of Jackson County outside of the corporate limits of the Cities of Kansas City and Independence. This chapter shall also apply within the City of Independence and/or the City of Kansas City, if such city adopts an ordinance consenting to such jurisdiction.

7301. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them:

- (1) "Controlled Substance" means a drug, substance or immediate precursor in Schedules I through V as set out in chapter 195, RSMo.

- (2) "Coordinator" means the Jackson County Prescription Drug Monitoring Program Coordinator, or the person or persons duly designated by the Coordinator to carry out the duties of the Coordinator specified in the PDMP.
- (3) "Dispenser" means a person who delivers a Schedule II, III, or IV Controlled Substance to a patient. However, the term does not include:
- (a) A hospital as defined in section 197.020, RSMo, that distributes such substances for the purpose of inpatient care or dispenses prescriptions for controlled substances at the time of discharge from such facility;
 - (b) A practitioner or other authorized person who administers such a substance; or,
 - (c) A wholesale distributor of a Schedule II, III, or IV Controlled Substance; or
 - (d) A hospice as defined in section 197.250(5), RSMo, that distributes such substances for the purpose of physical or psychological care for dying persons.
- (4) "Patient" means a person who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, not including a hospice patient enrolled in a Medicare-certified hospice program who has controlled substances dispensed to him or her by such hospice program;

(5) "Schedule II, III, or IV Controlled Substance" means a controlled substance listed in Schedules II, III, or IV as set out in chapter 195, RSMo, or as set out in the Controlled Substances Act, 21 U.S.C. section 812.

7302. Establishment of monitoring program; coordination with other jurisdictions.

7302.1 The Coordinator shall establish and maintain a program for monitoring the prescribing and dispensing of all Schedule II, III, and IV Controlled Substances by professionals licensed to prescribe or dispense such in that portion of Jackson County covered by this chapter, and may implement such rules which in the Coordinator's opinion are necessary to implement such program. The program established and maintained by the Coordinator shall operate so as to be consistent with federal law concerning regulation of Schedule II, III, or IV Controlled Substances and with privacy of lawful users of same. The rules may provide for the Coordinator to suspend the requirement of reporting a particular category of information pursuant to this section, if the Coordinator determines that so reporting will conflict with collection of other reported information by the collection management system of the monitoring program. The rules shall be effective upon approval of the County Legislature and shall be filed with the Clerk of the County Legislature.

7302.2 Within seven business days of having dispensed a Schedule II, III, or IV Controlled Substance, the Dispenser of same shall submit to the

Coordinator, or to an agency or entity designated by the Coordinator, information regarding such dispensing. The information shall be submitted electronically. The information submitted for each dispensing shall at minimum include:

- (a) The pharmacy's Drug Enforcement (DEA) number;
- (b) The date of dispensation;
- (c) If dispensed via a prescription:
 - (i) The prescription number or other unique identifier;
 - (ii) Whether the prescription is new or a refill;
 - (iii) The prescriber's DEA or National Provider Identifier (NPI) number;
 - (iv) The National Drug Code (NDC) of the drug dispensed;
 - (v) The quantity and dosage of the drug dispensed;
 - (vi) An identifier for the patient to whom the drug was dispensed, including but not limited to any one of the following: a driver's license number; the patient's government-issued identification number; the patient's insurance cardholder identification number; or the patient's name, address, and date of birth.

7302.3 The Dispenser's submission of the required information shall be in accordance with transmission standards established by the American Society for Automation in Pharmacy or any of its successor organizations.

7302.4 The Coordinator is authorized to issue a waiver of the electronic transmission requirement to a Dispenser demonstrably unable to comply with the requirement. A waiver shall expire one year from the date of its issuance. Required information submitted under a waiver shall be submitted within the same time frame as it required herein for electronic transmission.

7302.5 A Dispenser who has not received a waiver of the electronic submission requirement but who, due to unforeseen circumstances, is temporarily unable to transmit dispensation information electronically may upon application to the Coordinator receive an extension of up to 10 business days in which to submit the required dispensation information by electronic transmission, which extension may be renewed upon subsequent showing of need by the applicant Dispenser.

7302.6 The Coordinator shall make a decision concerning an application for a waiver or extension within three business days of receipt thereof. An applicant for a waiver or extension who has been aggrieved by a decision of the Coordinator may appeal the decision according to law within three business days of the Coordinator's decision.

7303. Dispensation information to be closed pursuant to law.

7303.1 Except when provided to persons or agencies authorized by this chapter to receive such information, dispensation information submitted to the Coordinator or the Coordinator's designee is a closed record pursuant to sections 338.100 and 610.021(14), RSMo, and not subject to public disclosure except as provided by law. No person shall provide such information to any person or agency not authorized by this chapter to receive it.

7303.2 The Coordinator shall develop and maintain procedures to ensure that the privacy and confidentiality of patients and personal information collected, recorded, transmitted, and maintained are not disclosed to persons not authorized by this ordinance to receive dispensation information.

7304. Coordinator to notify law enforcement or regulatory agency upon reasonable belief of a law or professional standards violation.

The Coordinator shall review dispensation information received and, if the Coordinator develops a reasonable belief that a violation of law has occurred, or develops a reasonable belief that a breach of professional standards has occurred, the Coordinator shall notify the appropriate law enforcement agency or the appropriate professional licensing, certification or regulatory agency. The Coordinator may provide any

dispensation information requested by such entities when advised that such information is required for conduct of an official investigation.

7305. Persons authorized to be provided dispensation information.

7305.1 Dispensation information and other data compiled by the Coordinator in connection with the monitoring program established by the Coordinator may be provided to the following persons upon a duly made request:

- (a) Persons, whether in or out of the State of Missouri, who are authorized to prescribe or dispense controlled substances, if the requesting person demonstrates that the request is made for the purpose of providing medical or pharmaceutical care for a patient;
- (b) Persons who request their own dispensation information in accordance with law;
- (c) The Missouri State Board of Pharmacy;
- (d) Any state board charged with regulating a professional authorized or prescribe or dispense controlled substances, and which has duly requested the information or data in the course of a current and open investigation into the acts of a professional under the jurisdiction of the state board. Only information related to the subject professional shall be provided by the Coordinator;

- (e) Local, state, and federal law enforcement or prosecutorial officials, both in or outside of Missouri, who are engaged in the administration, investigation or enforcement of laws governing prescription drugs based on a specific case and under a subpoena issued pursuant to court order;
- (f) The MO HealthNet division of the Missouri Department of Social Services regarding MO HealthNet program recipients; or
- (g) Any person pursuant to a subpoena issued by a judge or a judicial official pursuant to court order.

7305.2 In addition to the above-specified persons, the Coordinator may provide dispensation information and data to public or private entities for statistical or education purposes; however, the Coordinator shall first delete any information that could reasonably be thought usable to identify individual persons.

7306. Pharmacists or prescribers not required to obtain information from the Coordinator.

This chapter shall not be construed or interpreted to require a pharmacist or prescriber to obtain dispensation information possessed or maintained by the Coordinator.

7307. Penalties.

7307.1 No person, absent lawful authority, shall knowingly access or disclose prescription or dispensation information maintained by the Coordinator pursuant to the PDMP, or knowingly violate any other provision of the PDMP.

7307.2 Any person convicted of violating any provision of this chapter shall be punished by a fine of up to \$500 per violation or up to 90 days in jail per violation, or both.

7308. Establishment of Prescription Drug Monitoring Program Fund.

The Jackson County Director of Finance and Purchasing is authorized and directed to establish a fund to be designated as the "Prescription Drug Monitoring Program Fund" for the purpose of helping to fund a Prescription Drug Monitoring System and Prescription Drug Monitoring Program. All interest earned by the funds deposited in such special account shall be retained in the account to be appropriated according to provisions of this chapter. All expenditures from such fund shall be appropriate in accordance with applicable law.

7309. Deposit in Prescription Drug Monitoring Program Fund.

The Director of Finance and Purchasing upon receipt of funds designated for the Prescription Drug Monitoring Program Fund shall place said receipted payments in the Prescription Drug Monitoring Program Fund established in this chapter.

Section B. Severability Clause.

The provisions of this Ordinance are severable. In the event any provision of this Ordinance is determined to be invalid, the remaining provisions shall not be affected, except that in no case shall this Ordinance be valid and enforceable without the confidentiality provisions of section 7303. of this Ordinance.

Section C. Penalty Provision.

Any violation of any penal provision of this Ordinance shall be punishable pursuant to section 7307. of this Ordinance.

Section D. Effective Date.

This Ordinance shall be effective as of January 1, 2017.

Effective Date: This Ordinance shall be effective immediately upon its passage by the County Executive.

APPROVED AS TO FORM:

Jay D. Wood
Chief Deputy County Counselor

W. Stephen Ryon
County Counselor

I hereby certify that the attached Ordinance, Ordinance No. 4912 introduced on October 17, 2016, was duly passed on October 17, 2016 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

This Ordinance is hereby transmitted to the County Executive for his signature.

10-17-16
Date

Mary Jo Spino
Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 4912.

10-18-2016
Date

Frank White, Jr.
Frank White, Jr., County Executive

Funds sufficient to implement this Ordinance are subject to appropriation.

October 17, 2016
Date

[Signature]
Chief Financial Officer