

*November 2018*

## **State Prescription Drug Identification Laws**

### **Introduction**

According to a recent report from the Centers for Disease Control and Prevention (CDC), there were 70,237 drug overdose deaths in the United States in 2017.<sup>1</sup> Excessive prescribing of opioids has been a driving factor in the increase of drug overdose deaths in the last 15 years.<sup>2</sup> Nearly four out of five new heroin users begin by misusing prescription opioids.<sup>3</sup> Though prescription drug monitoring programs (PDMPs) are currently utilized to track prescriptions in 49 states and the District of Columbia,<sup>4</sup> many states do not require patients to show identification in order to fill prescriptions.<sup>5</sup>

To prevent the effects of the opioid epidemic from spreading, Nebraska recently passed a bill requiring patients to show photo identification to receive dispensed opioids.<sup>6</sup> Previously, Nebraska pharmacies were not mandated to require identification to dispense prescriptions. The sponsoring senator of the bill argued that such a requirement would help prevent the diversion of prescription drugs from the person prescribed the drug.<sup>7</sup> An Illinois congressional representative unveiled a similar legislative agenda in March 2018, aiming to divert “pharmacy shopping” for opioids.<sup>8</sup> As detailed below, many other states have adopted varied identification requirements for filling prescriptions, with similar intent and largely undetermined impact.

### **Reports on State Identification Laws**

In June 2013, the CDC published a report summarizing states’ prescription drug identification laws.<sup>9</sup> The report identified 25 states as having laws that either required or allowed pharmacists to request identification before dispensing prescription drugs.<sup>10</sup> The report notes that Oregon and Delaware were particularly unique in their approach to identification requirements. Oregon was the only state that granted pharmacists complete discretion to determine whether to ask for identification prior to filling prescriptions. Alternatively, Delaware was the only state that required pharmacists to check a valid photo identification before dispensing all controlled substances. The report characterizes the remaining 23 states as requiring pharmacists to check identification only under certain circumstances; for instance, in 15 states, a pharmacist was required to check identification only when the person filling the prescription was unknown to the pharmacist.<sup>11</sup>

In March 2016, the National Alliance for Model State Drug Laws (NAMSDL) published a chart of state laws and regulations relating to the dispensation of controlled substances.<sup>12</sup> The NAMSDL report indicates that in addition to the 25 states identified in CDC report, New Jersey, Tennessee, Utah, Wisconsin and Wyoming also have laws or regulations relating to identification requirements for opioids, totaling 35 states with such laws or regulations.<sup>13</sup>

The analysis in CDC’s report of what constitutes a prescription drug law appears to differ from the analysis that generated the NAMSDL report. Therefore, the discrepancy between the CDC and NAMSDL

reports – *i.e.*, the five additional states noted in NAMSDL’s report – are not due to the enactment of new laws since the publication of CDC’s report in 2013, but to differing categorization of existing laws by each report. Tennessee was the sole state to enact a new prescription drug identification law between the publication of the CDC and NAMSDL reports; the state now requires pharmacists to see a government issued identification before filling prescriptions of opioids, benzodiazepines, zolpidems, barbiturates, or carisopordols greater than a seven-day supply.<sup>14</sup>

A notable distinction between report analyses is that the NAMSDL report considers regulations in addition to statutes, whereas the CDC report only reviewed statutes. Wyoming’s identification requirements, for example, appear in regulations and not statutes, and therefore are noted only by the NAMSDL report. These regulations require that the pharmacist “verify the identity” of the person attempting to fill a controlled substance prescription.<sup>15</sup> Identification documentation is only required if the identification cannot be achieved visually (*i.e.*, the pharmacist recognizes the individual).<sup>16</sup> Similar to Wyoming’s requirements, in Utah, a pharmacist must note the “positive identification of the individual receiving the prescription, including the type of identification” when recording a prescription in the PDMP.<sup>17</sup> This positive identification requirement may indicate that a pharmacist must see identification prior to filling the prescription, but the requirement is too unclear to warrant including Utah in CDC’s tally of states with firm identification requirements. New Jersey and Wisconsin require a pharmacist to see identification only when the person filling the prescription is not the patient for whom the prescription was written.<sup>18</sup>

### **Notable Variations in State Identification Laws**

North Carolina, Delaware and West Virginia enforce particularly stringent identification requirements for individuals obtaining prescriptions. In North Carolina, an individual filling a prescription for a Schedule II or III controlled substance must produce a driver’s license, a special state identification card, military ID, or a passport.<sup>19</sup> These are the only forms of identification accepted.<sup>20</sup>

North Carolina enacted its prescription identification law in 2012 to combat prescription drug fraud and abuse. Proponents of the law asserted that people were “fooling the system” by going to see multiple doctors and multiple pharmacies,<sup>21</sup> and that having photo identifications on file would help the State Bureau of Investigation track down individuals who may be abusing the system.<sup>22</sup> Recognizing that many people do not have one of the required forms of photo identification, the law permits a friend or family member with photo identification to pick up prescriptions for a patient who does not have requisite identification.<sup>23</sup> Delaware, like North Carolina, specifies that only a driver’s license, a Delaware ID card, or a U.S. passport is acceptable identification to fill a prescription for any controlled substance (not limited to a particular Schedule).<sup>24</sup> West Virginia enacted its prescription identification law in 2012.<sup>25</sup> In West Virginia, individuals are required to present “a valid government-issued photo identification card” prior to release of a Schedule, II, III, or IV controlled substance.

Conversely, Illinois only requires that “a pharmacy maintain a policy regarding the type of identification necessary, if any, to receive a prescription.”<sup>26</sup> In Washington, the responsibility shifts to the physician who must indicate in any prescription for pain management medication that the person filling the

prescription must show photo ID.<sup>27</sup> Maine only requires a pharmacist to check identification for prescriptions of Schedule II controlled substances written by out-of-state practitioners.<sup>28</sup> Idaho requires pharmacists to positively identify a recipient of a controlled substance prior to dispensing the substance. Positive identification is presumed if the substance is being paid for, in whole or in part, through insurance.<sup>29</sup>

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<sup>1</sup> Hedegaard H, Miniño AM, Warner M. Drug overdose deaths in the United States, 1999–2017. NCHS Data Brief, no 329. Hyattsville, MD: National Center for Health Statistics. 2018.

<sup>2</sup> Corey Davis, Webinar: “Emergency Declarations to Address the Opioid Crisis: Assessing Impact and Identifying Gaps,” Sept. 19, 2017.

<sup>3</sup> Hodge, JG, Wetter, SA. “Opioid Related Public Health Declarations,” Presentation given as part of Webinar: “Emergency Declarations to Address the Opioid Crisis: Assessing Impact and Identifying Gaps,” Sept. 19, 2017.

<sup>4</sup> The governor of Missouri signed an executive order to establish a PDMP on July 17, 2017; however, the program is still undergoing implementation. *Months after an executive order, Missouri’s PDMP still isn’t up and running*, Fierce Healthcare, (Nov. 10, 2017) <https://www.fiercehealthcare.com/mobile/missouri-pdmp-prescription-data-eric-greitens-opioids-drug-crisis>

<sup>5</sup> See, e.g., Pennsylvania, which has a PDMP but does not require pharmacists to check identifications. The PA PDMP website notes that “collecting patient ID information is not legally required at this time. However, dispensers are permitted to collect IDs from patients if they so choose.” Pennsylvania Department of Health. Prescription Drug Monitoring Program, <http://www.health.pa.gov/Your-Department-of-Health/Offices%20and%20Bureaus/PaPrescriptionDrugMonitoringProgram/Pages/GeneralInfo.aspx#.WmpEP66nHlU>

<sup>6</sup> *Gov. Ricketts Approves Major Opioid Abuse Prevention Measure*, Office of Governor Pete Ricketts, (April 4, 2018) <https://governor.nebraska.gov/press/gov-ricketts-approves-major-opioid-abuse-prevention-measure>

<sup>7</sup> *Id.*

<sup>8</sup> *Davis introduces bill to require ID for opioid pickup at pharmacies*, Herald & Review, (Mar. 13, 2018) [https://herald-review.com/news/local/davis-introduces-bill-to-require-id-for-opioid-pickup-at/article\\_6909746a-c8ec-55f8-8ab4-faf6f0b27665.html](https://herald-review.com/news/local/davis-introduces-bill-to-require-id-for-opioid-pickup-at/article_6909746a-c8ec-55f8-8ab4-faf6f0b27665.html)

<sup>9</sup> Centers for Disease Control. MENU OF STATE PRESCRIPTION DRUG IDENTIFICATION LAWS (hereinafter CDC Report) (current through June 20, 2013). <https://www.cdc.gov/phlp/docs/menu-pdil.pdf>

<sup>10</sup> *Id.* The states listed are Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Texas, Vermont, Virginia, and West Virginia.

<sup>11</sup> CDC report at 3, supra note 8. These states are: Connecticut, Hawaii, Idaho, Indiana, Louisiana, Maine, Michigan, Minnesota, New Mexico, New York, North Dakota, Oklahoma, South Carolina, Texas and Virginia.

<sup>12</sup> National Alliance for Model State Drug Laws (“NAMSDL”). STATES THAT REQUIRE ID PRIOR TO DISPENSING CONTROLLED SUBSTANCES OR NON-CONTROLLED PRESCRIPTION DRUGS (hereinafter “NAMSDL report”) (current through March 2016).

<sup>13</sup> *Id.* State laws may have been revised since the publication of the NAMSDL report.

<sup>14</sup> Tenn. Code Ann. § 53-11-310 (West); see also NAMSDL report at 23.

<sup>15</sup> NAMSDL report at 27.

<sup>16</sup> *Id.*

<sup>17</sup> NAMSDL report at 24.

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<sup>18</sup> NAMSDDL report at 17, 27.

<sup>19</sup> NAMSDDL report at 18.

<sup>20</sup> *Id.*

<sup>21</sup> *New state law requires photo ID to fill some prescriptions*, WRAL.com, (Feb. 29, 2012)

<http://www.wral.com/lifestyles/healthteam/story/10796063/>

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> NAMSDDL report at 4.

<sup>25</sup> *West Virginia Legislature Enacts Comprehensive Substance Abuse Laws*, Health Law Monitor, (April 25, 2012)

<http://healthlawmonitor.jacksonkelly.com/2012/04/west-virginia-legislature-enacts-comprehensive-substance-abuse-laws.html>

<sup>26</sup> NAMSDDL report at 7.

<sup>27</sup> NAMSDDL report at 26.

<sup>28</sup> NAMSDDL report at 10.

<sup>29</sup> NAMSDDL report at 7.