

Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight
Presented by Alexandra Blasi, Executive Secretary
On behalf of
The Kansas State Board of Pharmacy
November 3, 2022

Chairwoman Landwehr and Members of the Committee:

The Kansas State Board of Pharmacy respectfully submits this testimony related to the Kansas Prescription Monitoring Program, K-TRACS. The Board appreciates the opportunity to respond to this Committee regarding the Medicaid Inspector General's update that requested changes be made to grant law enforcement additional access to K-TRACS. The Board also wishes to express its sincere gratitude for the work the Kansas Legislature has done in conjunction with the Attorney General's office to fund K-TRACS during FY 2022 and FY 2023 using Opioid Settlement Litigation Funds awarded to the state of Kansas. This funding has been vital to ongoing program operation and success.

Access to K-TRACS data is directly controlled by the Kansas Prescription Monitoring Program Act, which was just updated by the Kansas Legislature earlier this year in [SB 200](#). While the Board had meetings with the Kansas Department of Health and Environment about expanded access for the Kansas Medicaid program, which were successfully made as a friendly amendment, no amendments or testimony was received from the Medicaid Inspector General or other law enforcement groups. K-TRACS data is available to law enforcement, including the Medicaid Inspector General's office, subject to a valid search warrant. While this does represent a barrier to access, it was set out in the original K-TRACS legislation in 2008 and serves to protect patient privacy.

K.S.A. 65-1685 provides:

- (c) The board is hereby authorized to provide data in the program to the following individuals:*
- (1) Individuals authorized to prescribe or dispense scheduled substances and drugs of concern, for the purpose of providing medical or pharmaceutical care for their patients;*
 - (2) an individual who requests the individual's own prescription monitoring information in accordance with procedures established by the board;*
 - (3) designated representatives from the professional licensing, certification or regulatory agencies charged with administrative oversight of those individuals engaged in the prescribing or dispensing of scheduled substances and drugs of concern;*
 - (4) local, state and federal law enforcement or prosecutorial officials engaged in the administration, investigation or enforcement of the laws governing scheduled substances and drugs of concern subject to the requirements in K.S.A. 22-2502, and amendments thereto;***
 - (5) designated representatives from the department of health and environment regarding authorized medicaid program recipients or practitioners;*
 - (6) individuals authorized by a grand jury subpoena, inquisition subpoena or court order in a criminal action;*

- (7) personnel of the prescription monitoring program advisory committee for the purpose of operation of the program;*
- (8) personnel of the board for purposes of operation of the program and administration and enforcement of this act or the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto;*
- (9) individuals authorized to prescribe or dispense scheduled substances and drugs of concern, when an individual is obtaining prescriptions in a manner that appears to be misuse, abuse or diversion of scheduled substances or drugs of concern;*
- (10) medical examiners, coroners or other individuals authorized under law to investigate or determine causes of death;*
- (11) persons operating a practitioner or pharmacist impaired provider program in accordance with K.S.A. 65-4924, and amendments thereto, for the purpose of reviewing drugs dispensed to a practitioner or pharmacist enrolled in the program;*
- (12) delegates of individuals authorized by paragraphs (1), (9) and (10);*
- (13) individuals or organizations notified by the advisory committee as provided in subsection (g);*
- (14) practitioners or pharmacists conducting research approved by an institutional review board who have obtained patient consent for the release of program data; and*
- (15) an overdose fatality review board established by the state of Kansas.*

It is important to note that the Prescription Monitoring Program Advisory Committee is already vested with authority to review K-TRACS data for suspicious prescribing, dispensing, or doctor shopping (multiple provider episodes) and make referrals to regulatory bodies and law enforcement for investigation, which it has done. The Committee is composed of prescribers, dispensers, and a member of law enforcement from the Kansas Bureau of Investigation. At the Committee's suggestion, the Board hired a full-time pharmacist a few years ago to thoroughly and clinically review K-TRACS data for patterns and activity of concern. Regulatory agencies, such as the Boards of Healing Arts and Nursing, also have authority to request K-TRACS data for any active investigation. The Board evaluates pharmacy dispensing and has worked in tandem with the U.S. Drug Enforcement Agency on pill mill investigations and prosecution. The Board also fulfills all requests from the Medicaid Inspector General's office that comply with the statute.

While the Board has not recently had an opportunity to research expanded access for law enforcement, the issue is not without controversy or litigation in other states. Many have argued that law enforcement should not have unfettered access to program data because it is a mandatory public health data collection tool that houses patients' protected health information. Others suggest that certain agencies have a vested interest in reviewing program data to prevent fraud, waste, and abuse. Courts are also undecided on this issue, suggesting that probable cause may be constitutionally necessary for law enforcement to access data, thus necessitating a search warrant. The state of Missouri only authorized a statewide prescription monitoring program in 2021 after many years of concerns about patient privacy. Arizona recently reduced program access for law enforcement. The following resource is available regarding law enforcement access: [Requestor Tables 20201210.xlsx \(pdmpassist.org\)](#). The Board welcomes the opportunity to engage in research and discussion on this topic but recommends exercising caution.

The Board has not been engaged by the Medicaid Inspector General's office related to this matter in recent years. Additionally, the Board is unclear whether the request is limited to expanding access to K-TRACS for the Medicaid Inspector General's office or includes all law enforcement. Clarity on this matter is imperative to evaluating any concerns. If considering expansion of access to K-TRACS data, the Board would encourage the Legislature to consider the most narrowly tailored approach. For example, if additional K-TRACS access is needed for Medicaid program staff, such access may be appropriately limited to Medicaid applicants or participants.

The Board would be happy to respond to additional requests or queries from the Committee and welcomes the opportunity to work toward understanding concerns and considering solutions.

Respectfully submitted.