

Overdose Fatality Review Teams: PDMP Records

How can we obtain Prescription Drug Monitoring Program (PDMP) records after a person dies?

Response

In the absence of a specific state statute or regulation authorizing the release of Prescription Drug Monitoring Program (PDMP) records to an OFR team, it is unlikely the team can directly receive prescription information from the state PDMP. However, OFR teams should contact the administrator of their state PDMP to determine if other avenues exist through which one or more team members can obtain PDMP records in the absence of direct authority, such as via the decedent's medical file or a next of kin request.

PRACTICE TIP

You can find your state PDMP administrator's contact information here: pdmpassist.org.

Additional Discussion

State statute or regulation may allow an OFR team access to PDMP records

Approximately 40 percent of state PDMPs are Health Insurance Portability and Accountability Act (HIPAA)-covered entities, while the other 60 percent are not. Regardless of a PDMP's status as a HIPAA-covered entity, disclosure and redisclosure of information held by PDMPs are governed by state law rather than by HIPAA, as state laws place tighter limits on disclosure. Due to concerns regarding patient privacy, states are very strict regarding the disclosure and redisclosure of PDMP information, and virtually all state PDMP laws include severe penalties for accessing or sharing PDMP records without authorization. Obtaining the prescription history of a decedent directly from the PDMP typically requires a statute or regulation that specifically allows the OFR team to receive such information. As of June 2021, only six states explicitly allow this.¹ However, if the OFR team is not located in one of those six states, the team should contact the PDMP administrator in its state and determine if there are any other ways in which PDMP records can be shared with the team.²

PRACTICE TIP

States expressly allowing OFR teams access to PDMP records (as of June 2021): Delaware, Indiana, Maryland, Utah, Oklahoma, and West Virginia.

State statute may allow PDMP records to become part of a medical file

An OFR team might be able to obtain a decedent's prescription history from other sources; however, the extent of that access also depends on state law. For instance, if state law allows (or does not specifically prohibit) an individual's PDMP records to be maintained in the patient's medical file, the OFR team could get the information with the decedent's other medical records.³ Using this option requires the OFR team to have a basis to access medical records containing protected health information from one or more health care providers. OFR teams should contact the PDMP administrator in their state for more information about this option.

PRACTICE TIP

States where PDMP records may be part of the medical file (as of 2020): California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Nebraska, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

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Personal representative or next of kin request

In addition, some state laws or regulations allow PDMP records to be released to a decedent's executor, personal representative, or next of kin. In those states, the OFR team could determine who that is and talk to that individual to try to obtain the records. Choosing this option would require that the executor, personal representative, or next of kin request the information from the PDMP and then turn it over to the OFR team. As of May 2021, only nine states specifically allow an individual's executor, personal representative, or next of kin to request and receive PDMP records on a decedent.⁴

While there may be additional ways in which OFR teams can obtain PDMP records, such as through a medical examiner/coroner request, each state's laws are specific to that state and are subject to different interpretations. Therefore, OFR teams should contact the PDMP administrator in their state to determine what is allowable under their state statutes.

PRACTICE TIP

States where executor, personal representative, or next of kin can request PDMP records (as of May 2021): Alaska, Iowa, Kansas, Louisiana, Maine, Maryland, New Hampshire, Washington, and Wisconsin.

Definitions

HIPAA-covered entity [45 C.F.R. § 160.103]: Health plan, health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA.

PDMP: Statewide database containing information on dispensed controlled substances, certain prescription drugs, and certain drugs of concern.⁵ A primary purpose of the PDMP is to promote safe prescribing and dispensing practices by providing timely and essential information to health care providers.

Resource

[Prescription Drug Monitoring Program Training and Technical Assistance Center \(PDMP TTAC\)](#)

¹ DEL. CODE ANN. tit. 16, § 4798(l)(2)(m) (West. 2021); IND. CODE ANN. § 16-49.5-2-6(b)(1)(B) (West. 2021); MD. CODE ANN., HEALTH-GEN. § 21-2A-06(b)(13)(ii) (West. 2021); OKLA. STAT. tit. 63, § 2-309D(A)(7) (West 2021). UTAH CODE ANN. § 58-37f-301(2)(t) (West. 2021); W. VA. CODE R. § 64-29-7.5.c (West. 2021).

² For example, the statutory language in three other states, Massachusetts, Oregon, and Washington, may allow one or more potential OFR team members to access PDMP records. See MASS. GEN. LAWS ANN. Ch. 94C § 24A(f)(8) (West. 2021) (PDMP records may be provided to "personnel within the office of a district attorney, provided, however, that the data request is made in connection with a bona fide investigation into the cause and manner of death of an individual suspected of a drug overdose"); OR. REV. STAT. ANN. § 431A.865(2) (West. 2020) ("The Oregon Health Authority may review the prescription monitoring information of an individual who dies from a drug overdose."); WASH. REV. CODE ANN. § 70.225.040(3)(m) (West. 2021) (PDMP records may be provided to "the local health officer of a local health jurisdiction for the purposes of patient follow-up and care coordination following a controlled substance overdose event."). As shown by the parentheses to the citations, however, the application of these provisions to an OFR team is not entirely clear, and thus consultation with the state's PDMP administrator is appropriate.

³ As of the 2020 survey conducted by the Prescription Drug Monitoring Program Training and Technical Assistance Center, 22 states allow a practitioner to include a patient's PDMP report in either his or her written medical file or stored in his or her electronic health record. Once the report is in the patient's medical file or electronic health record, it has the same protections under HIPAA as any other medical record and can be disclosed the same as any other medical record.

⁴ ALASKA ADMIN. CODE TIT. 12 § 52.860 (decedent's family); IOWA ADMIN. CODE r. 657-37.16 (executor of patient's estate); KAN. ADMIN. REGS. § 68-21-5 (personal representative); LA. STAT. ANN. § 40:4007 (executor of a will or court-appointed succession representative); 14-118-011 ME. CODE R. § 7 (authorized representative); MD. CODE REGS. 10.47.07.05 (personal representative of a decedent's estate); N.H. CODE ADMIN. R. Ph 1505.01 (authorized representative); WASH. ADMIN. CODE § 246-470-040 (personal representative); WIS. ADMIN. CODE CSB § 4.11 (authorized representative).

⁵ As of June 2021, all states have a statewide PDMP. In June 2021, the Missouri governor signed legislation making it the final state to enact a statewide PDMP. Until the PDMP becomes operational, St. Louis County operates a PDMP in which most Missouri counties participate.