

MEMORANDUM OF UNDERSTANDING

Between the

**Kentucky Cabinet for Health and Family Services
275 East Main Street
Frankfort, KY 40621**

and

**The Ohio State Board of Pharmacy
77 South High Street, Room 1702
Columbus, Ohio 43215**

BACKGROUND:

The abuse and diversion of controlled pharmaceutical substances is a major problem impacting public health and safety. Several states have implemented Prescription Monitoring Programs (PMPs) to provide for monitoring and reporting controlled substances dispensed within the state. Kentucky's PMP is the Kentucky All Schedule Prescription Electronic Reporting (KASPER) system and Ohio's PMP is the Ohio Automated Rx Reporting System (OARRS). While several states (including Kentucky and Ohio) currently allow certain authorized entities from other states to establish accounts and access their PMP data, there is currently no automated system to allow these states to exchange PMP data and provide an authorized end user with one report containing the PMP data from multiple states. The U.S. Department of Justice, through the Bureau of Justice Assistance and in association with the IJIS Institute, is sponsoring a Prescription Monitoring Information Exchange (PMIX) project, to facilitate interstate exchange of PMP data using a central hub server structure that would pass allowable requests and responses between state PMP data sharing partners. The IJIS Institute (formerly the Integrated Justice Information Systems Institute) was formed in 2001, to leverage the expertise of industry and assist justice and public safety agencies in sharing information. This hub server structure is anticipated to be far more cost effective than each participating state establishing a point-to-point link with each of its exchange partner states.

PURPOSE:

The purpose of this Memorandum of Understanding is to establish the terms under which the Kentucky Cabinet for Health and Family Services (CHFS) and the Ohio State Board of Pharmacy (OSBOP) agree to participate in the Bureau of Justice Assistance (BJA)/IJIS Institute Prescription Monitoring Information Exchange (PMIX) project, with the objective of utilizing a hub server structure to exchange test PMP data between the two states.

AGREEMENT:

WHEREAS, pursuant to Kentucky Revised Statute (KRS) 218A.202 (6), CHFS is authorized to provide access to KASPER data, to certain authorized persons and entities; and

WHEREAS, pursuant to KRS 218A.245, CHFS is authorized to enter into reciprocal agreements, with other states, to share prescription drug monitoring information if the other state's prescription drug monitoring program is compatible with the program in Kentucky; and

WHEREAS, the OSBOP is authorized to provide access to OARRS data to certain authorized entities from other states; and

WHEREAS, the OSBOP has a prescription drug monitoring program that is compatible with the program in Kentucky; and

WHEREAS, CHFS and OSBOP both maintain databases that contain data regarding prescriptions filled by pharmacies in their respective states; and

WHEREAS, CHFS and OSBOP desire to share information from their two databases to prevent the improper or illegal use of controlled substance prescriptions by people who use dispensers in both states; and

WHEREAS, CHFS and OSBOP desire to define and describe the circumstances of their sharing of test information between their two databases for purposes of a prototype designed to provide a proof of concept;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties hereby mutually agree to the following:

1. TERM and TERMINATION. This Memorandum of Understanding shall be effective upon the date of the last signatory hereto and shall terminate one year from such effective date, unless previously terminated pursuant to the terms herein. The annual term of this Memorandum of Understanding may be renewed, upon the mutual written consent of both parties. Either party may terminate this Memorandum of Understanding upon ten days written notice served on the other party or immediately for cause.
2. NOTICE. All notices or other communications required or permitted to be given under this Memorandum of Understanding shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed via certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the parties at the addresses set for the below:

Kentucky Cabinet for Health and Family Services
Office of the Inspector General
275 East Main Street, 5E-B
Frankfort, KY 40621
Attention: Sadiqa Reynolds

The Ohio State Board of Pharmacy
77 South High Street, Room 1702
Columbus, Ohio 43215
Attention: Danna Droz

3. TERMS OF PARTICIPATION. The parties mutually agree that their sharing of information shall be according to the following terms:

- a. Information to be Exchanged. The PMP information to be exchanged shall consist of test data only, and shall not identify any actual individual patient, prescriber or dispenser. Each party shall be responsible for generating the test data they will transmit to the PMIX prototype system, and for ensuring that no actual patient, prescriber or dispenser data is used.
 - b. Data Usage. The test data shall be used solely for purposes of developing, testing and demonstrating the PMIX prototype capabilities including the hub server software, and the application modifications to the KASPER and OARRS systems (including user interfaces as applicable), in order to demonstrate the capability (proof of concept) of the prototype PMP data exchange model. Demonstration of the PMIX prototype may be conducted for officials from the participating states, other interested states, federal officials, and members of the IJIS Institute. Test data shall not be used for any other purpose and shall not be released or disclosed to any other person or entity, without the express, written consent of the party providing such data.
 - c. Privacy and Security Safeguards. Only test data will be used for the prototype and all data transmissions to and from the hub server will utilize the X.509 Public Key Infrastructure encryption standard. The hub server will not decrypt the "payload" containing the patient related test data, but will only process administrative test data appended to the requests and responses to determine the routing of the data.
 - d. Destruction of Data. Upon termination for any reason by either party or upon completion of the project, each party agrees to certify in writing the destruction of all test data provided by the other party.
4. LIMITED LIABILITY. The parties will not waive the intent to assert available limitations and immunities pursuant to that states' applicable law in all cases.
 5. LIABILITY. Each agency shall assume the responsibility and liability for acts and omissions of its own officers, agents, or employees in connection with the performance of their official duties. For tort liability purposes, no participating agency shall be considered the agent of the other participating agencies. Each participating agency shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. The parties expressly agree that no provision of this agreement is in any way intended to constitute a waiver, by either party, of any immunity from suit that either party may have by operation of law.
 6. FORCE MAJEURE. No party shall be deemed to be in violation of this Memorandum of Understanding if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Memorandum of Understanding after the intervening cause ceases.

7. INDEMNIFICATION. No party waives any right or defense to indemnification that may exist in law or equity.
8. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purpose and to the extent set forth in this Memorandum of Understanding, and in respect to performance of services pursuant to this Memorandum of Understanding, each party is and shall be a public agency separate and distinct from the other parties and, subject only to the terms of this Memorandum of Understanding, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Memorandum of Understanding. Nothing contained in this Memorandum of Understanding shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability of one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agencies or any other parties.
9. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed, or received by that party to the extent that such information is confidential by law or otherwise required by this Memorandum of Understanding.
10. COSTS. Each party shall bear responsibility for their own costs or expenses incurred in the performance of their obligations herein.
11. AMENDMENTS AND ASSIGNMENT. The terms and conditions of this Memorandum of Understanding may only be amended by mutual written consent of both parties and no party shall assign its respective rights or obligations under this Memorandum of Understanding without prior written consent of the other party.
12. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Memorandum of Understanding on behalf of each party has full power and authority to enter into this Memorandum of Understanding and that the parties are authorized by law to perform the services set forth in paragraph (3).

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be signed and intend to be legally bound thereby.

By: Janie Miller

Date: 8/21/08

Janie Miller, Secretary
Kentucky Cabinet for Health and Family Services

By: William T. Winsley

Date: 7-31-2008

William T. Winsley, Executive Director
The Ohio State Board of Pharmacy