

VERMONT'S PRESCRIPTION CONFIDENTIALITY LAW
18 V.S.A. § 4631
FREQUENTLY ASKED QUESTIONS (FAQ)
Published by the Vermont Office of the Attorney General – July 2, 2009
Revised April 7, 2010

Effective July 1, 2009, Vermont law restricts the use of prescriber-identifiable data for marketing prescription drugs. The governing statute is 18 V.S.A. § 4631. Set forth below are answers to some common questions about implementation of the law.

This document does not repeat the statutory language and definitions and is not intended as a substitute for reading the statute.

1. The law has been challenged in court. Is the law presently in effect?

Answer: Yes. The effective date was July 1, 2009. The law was upheld by the United States District Court for the District of Vermont on April 23, 2009. The plaintiffs in that lawsuit have appealed the decision, but the courts allowed the law to go into effect while the appeal is pending.

2. The law allows the use of prescriber-identifiable data for marketing if a prescriber consents. 18 V.S.A. § 4631(c), (d). How do we find the list of prescribers who have consented?

Answer: The Department of Health, through the Board of Medical Practice, maintains a current list of all prescribers who have consented under 18 V.S.A. § 4631(c). The list is posted on the website of the Board of Medical Practice:

http://healthvermont.gov/hc/med_board/application.aspx

Under Applications, scroll down to Prescriber Data Sharing Program.

3. What process was used to solicit consent from prescribers?

Answer: As required by statute, the Department of Health and the Office of Professional Regulation solicit consent from prescribers on the prescribers' license application and renewal forms. Prescribers may also consent or revoke consent at any time by filing the appropriate form.

4. How often must a regulated entity review the list of prescribers who have consented?

Answer: The statute requires a regulated entity to review the list at a minimum every six months. Thus, if a regulated entity reviewed the list on July 1, 2009, it must review the list again by January 1, 2010. Regulated entities may wish to review the list more frequently, as prescribers may be added to the list, but they are not obligated to do so.

5. Does the law restrict the use for marketing of prescriber-identifiable data obtained before July 1, 2009?

Answer: No.

6. What is the penalty for a violation of the statute?

Answer: A violation of the Prescription Confidentiality Law is a prohibited practice under 9 V.S.A. § 2453, Vermont's Consumer Fraud Act. *See* 9 V.S.A. § 2466a(a). The Attorney General has the same authority to investigate violations and obtain remedies as for other violations of the Consumer Fraud Act. *See* 18 V.S.A. § 4631(f). Among other things, the Attorney General may seek injunctive relief and/or civil penalties of up to \$10,000 for each violation. *See* 9 V.S.A. § 2458.

7. Does a pharmaceutical manufacturer violate the law if the manufacturer obtains prescriber-identifiable data for non-consenting prescribers from a data vendor?

Answer: The law does not restrict the transfer of prescriber-identifiable data; it restricts the use of the data for marketing prescription drugs. In the circumstances described, the manufacturer would violate the law only if the manufacturer *used* the data for marketing prescription drugs.

8. Can a pharmaceutical manufacturer assume that data obtained from a data vendor after July 1, 2009 complies with the law?

Answer: No. Because the law restricts the use of the data for marketing, the pharmaceutical manufacturer must take the necessary steps to ensure that its use of data complies with the law in Vermont.

If you have additional questions, please send them via email to:
prescriptionconfidentiality@atg.state.vt.us.