

Agreement

This Agreement between the Missouri Department of Health and Senior Services ("DHSS") and Express Scripts, Inc. ("ESI") applies to the information that ESI voluntarily provides to DHSS in response to DHSS' Request for Prescribing and Dispensing Information (attached hereto as Exhibit A). That information is referred to herein as "Data."

1.1 Permitted Uses:

1.1.1 DHSS and Other Recipients (as defined below) shall use the Data strictly for the Permitted Uses (as defined herein), and in no event shall DHSS or any of its agents make any other use, disclosure, or copy of the Data, unless as authorized by law. DHSS shall use the Data strictly to carry out the Missouri Bureau of Narcotics and Dangerous Drugs' ("BNDD") functions (the "Permitted Uses"). In no event shall the identification of or data pertaining to any particular patient be a Permitted Use, whether using the Data alone or in combination with other data from any source whatsoever.

- a. Nothing in this Agreement shall grant or provide DHSS any ownership of, right to use, or interest in any Data beyond the Permitted Uses. DHSS understands and agrees that any Data made available by or obtained from ESI are, as between the parties, the sole and exclusive property of ESI. This Agreement does not and should not be interpreted to restrict DHSS's or BNDD's legal authority or ability to conduct a lawful investigation, which may include sharing of Data with Missouri professional licensing boards and/or law enforcement ("Other Recipients"), and providing records in accordance with applicable law. DHSS shall formally notify Other Recipients of the requirement to adhere to all provisions herein, including but not limited to all limitations and prohibitions on use and disclosure of any Data.
- b. ESI agrees that it will provide only Data that it is permitted to release to DHSS.
- c. It is understood and agreed that DHSS is required to protect the Data from disclosure in accordance with section 195.042, RSMo, and any other state or federal law concerning its disclosure.

1.2 Prohibited Activities:

1.2.1 DHSS and Other Recipients are strictly prohibited from using Data for any purpose not expressly authorized by this Agreement as a Permitted Use. Without limiting the foregoing, DHSS and Other Recipients shall not: (a) distribute, publicly display, sublicense, lease, rent, loan, transfer, or otherwise disclose or make available the Data for view or use by or for the benefit of third parties; (b) collect, compile, assemble or otherwise attempt to use the Data in any manner or for any purpose not expressly authorized by this Agreement; or (c) use the Data in violation of any applicable laws or regulations, or in a manner that infringes, misappropriates, or violates any intellectual property or other rights of a third party, or violates any contractual or legal duty or obligation.

1.3 Accuracy of Information:

1.3.1 ESI represents that, to its knowledge, all Data provided will be consistent with the information available to ESI. ESI shall not be responsible for any inaccuracies in the Data it provides in good faith to DHSS. The Data are made available by ESI "as is", "as available" and with all faults, and all use of the Data is at DHSS's and Other Recipients' own risk. To the fullest extent permissible under applicable law, ESI hereby disclaims any and all implied and statutory warranties of any kind, including but not limited to any warranties of merchantability and fitness for a particular purpose. No employee or agent has authority to bind ESI to any representations or warranties not expressly set forth in this Agreement.

1.4 Representations and Warranties.

1.4.1 DHSS represents and warrants to ESI that, in connection with the Data and the relationship between the Parties: (a) DHSS shall at all times comply with all applicable laws, rules and regulations with respect to using the Data; (b) DHSS will not use or attempt to use the Data to determine the identity of any person or entity or attempt to directly or indirectly contact any such person or entity other than a prescriber or pharmacy included in the Data; (c) DHSS will not use any de-identified information contained in the Data in an attempt to determine the source or other identifiers associated with the Data if not otherwise identified by ESI or re-identify any person referenced by the Data using any source whatsoever, whether public or private; (d) DHSS and Other Recipients do not knowingly own, possess, license, or otherwise have access to any other software or other technology usable for re-identification of any de-identified Data; (e) DHSS will not attempt to reverse engineer any portion of the Data for the purpose of determining the person prescribed or dispensed a Drug; and (f) if DHSS at any time, through acquisition, license, or otherwise, obtains the software or other technology necessary for or that permits re-identification of any patient related to any portion of the Data, DHSS shall not use such software or technology to re-identify the Data, shall immediately notify ESI, and shall delete, remove or destroy the Data and any copies thereof in any form within DHSS's possession. DHSS acknowledges that any breach of this Section 1.4 may constitute a material breach of this contract and may cause irreparable harm to ESI and ESI's clients. In the event of any actual or threatened prohibited use of Data by DHSS or Other Recipients, ESI shall be entitled to seek injunctive or other equitable relief on a cumulative basis and in addition to other remedies available at law or pursuant to this contract.

1.4.2 Each party acknowledges and agrees that the warranties in this section are in lieu of, and each party expressly disclaims, all other warranties, whether statutory, elsewhere expressed or implied, including, without limitation, any warranties of merchantability, title, fitness for a particular purpose or implied warranties arising from any course of dealing or course of performance.

1.5 Limitations on Liability:

- 1.5.1 Notwithstanding the provisions of Section 1.4.1, neither party shall be liable to the other for monetary (a) damages, (b) losses, (c) claims, and (d) causes of action arising out of or related to the Data or this Agreement.
- 1.5.2 ESI shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
- 1.5.3 Under no circumstances shall this agreement create any liability for ESI.

1.6 Publicity-Use of Name:

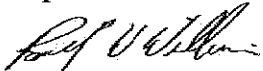
1.6.1 Neither party shall, without the prior review of the other party, use any of the other party's service names, logos, trademarks, or service marks, whether registered or unregistered, in advertising, publicity, or otherwise. Provided, however, that either party may disclose: (a) the existence of this Agreement, (b) the fact that DHSS has requested the voluntary provision of certain information from all dispensers of controlled substances, pharmacy benefit management organizations, and other health care entities as outlined in Exhibit A to this Agreement, (c) the fact that ESI voluntarily provided certain information to DHSS in response to DHSS' Request for Prescribing and Dispensing Information outlined in Exhibit A to this Agreement, and (d) information required by law.

1.7 Open Records.

1.7.1 ESI acknowledges that DHSS, as a government agency, may be subject to applicable freedom of information or open records laws ("Act") and must, upon request, disclose certain materials as are covered by and not exempted from such laws. DHSS acknowledges that Data provided under this Agreement are proprietary and confidential to ESI and shall be exempt from that Act to the fullest extent permitted by law. DHSS agrees to give ESI notice and the minimum statutory or regulatory period of time to oppose, request redactions or limitations on any disclosures under a third party freedom of information or open records request pertaining to this Agreement or Data provided hereunder. This provision shall survive termination of the Agreement.

SIGNED AND AGREED TO BY:

Department of Health and Senior Services



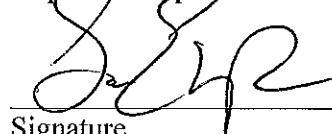
Signature

Randall W. Williams, MD, FACOG

Printed name

Date: 11/20/2017

Express Scripts, Inc.



Signature

Thomas E. Henry Sr - VP? CDO

Printed name

Date: 11/20/2017

EXHIBIT A
REQUEST FOR PRESCRIBING AND DISPENSING INFORMATION

The Department requests the voluntary provision of certain information from dispensers of controlled substances, pharmacy benefit management organizations, and other health care entities. The information will be used to identify activity indicating that controlled substances, including opioids, are being inappropriately prescribed, dispensed, or obtained, and to take appropriate action. Specifically, the Department requests the information below regarding dispensation of Schedule II-IV controlled substances. The Department requests the information in electronic format for the time period January 1, 2017, through October 31, 2017, and monthly thereafter. Before the information is provided to the Department, it must be de-identified with respect to individual patients.

1. Prescriber name and NPI
2. Pharmacy name and NPI
3. Drug name (generic name and NDC)
4. Drug Strength
5. Drug Quantity
6. Days Supply
7. Date of dispensation
8. Pharmacy City, State, Zip
9. Prescriber City, State, Zip
10. Entity Type (person or business)
11. Refill Number

If you have the requested information and would like to provide it to the Department, please call the Department's Bureau of Narcotics and Dangerous Drugs at (573) 751-2111 to arrange for transfer of the information.