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PROPRIETARY AND TRADE SECRET INFORMATION POLICY

Minnesota Prescription Drug Affordability Board

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Minnesota Prescription Drug Affordability Board

Title:	Proprietary and Trade Secret Information; Confidentiality	Policy No.: 02
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I. Purpose

The Minnesota Prescription Drug Affordability Board (“Board”) was established “to protect consumers, state and local governments, health plan companies, providers, pharmacies, and other health care system stakeholders from unaffordable costs of certain prescription drugs.” Minn. Stat. § 62J.87, subd. 1 (2023). Information submitted to the Board regarding prescription drugs is generally public, but the Board is authorized to protect bona fide trade secret and otherwise proprietary or nonpublic information from public release under certain circumstances.

Therefore, the Board adopts this policy to establish procedures for the protection and use of such information and to resolve disputes about data classifications.



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II. Statutory Provisions

The Board's statutory authority provides as follows related to proprietary and trade secret information and confidentiality:

62J.87 PRESCRIPTION DRUG AFFORDABILITY BOARD.

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Subd. 7. Meetings. (a)

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The board may meet in closed session when reviewing proprietary information, as determined under the standards developed in accordance with section 62J.91, subdivision 3.



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62J.90 PRESCRIPTION DRUG PRICE INFORMATION; DECISION TO CONDUCT COST REVIEW.

* * *

Subd. 2. Identification of certain prescription drug products.

* * *

(c) The board shall make available to the public the names and related price information of the prescription drug products identified under this subdivision, with the exception of information determined by the board to be proprietary under the standards developed by the board under section 62J.91, subdivision 3, and information provided by the commissioner of health classified as not public data under section 13.02, subdivision 8a, or as trade secret information under section 13.37, subdivision 1, paragraph (b), or as trade secret information under the Defend Trade Secrets Act of 2016, United States Code, title 18, section 1836, as amended.



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(b) "Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

of the prescription drug products identified under this subdivision, with the exception of information determined by the board to be proprietary under the standards developed by the board under section 62J.91, subdivision 3, and information provided by the commissioner of health classified as not public data under section 13.02, subdivision 8a, or as trade secret information under section 13.37, subdivision 1, paragraph (b), or as trade secret information under the Defend Trade Secrets Act of 2016, United States Code, title 18, section 1836, as amended.



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62J.91 PRESCRIPTION DRUG PRODUCT REVIEWS.

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Subd. 3. Public data; proprietary information. (a) Any submission made to the board related to a drug cost review must be made available to the public with the exception of information determined by the board to be proprietary and information provided by the commissioner of health classified as not public data under section 13.02, subdivision 8a, or as trade secret information under section 13.37, subdivision 1, paragraph (b), or as trade secret information under the Defend Trade Secrets Act of 2016, United States Code, title 18, section 1836, as amended.

(b) The board shall establish the standards for the information to be considered proprietary under paragraph (a) and section 62J.90, subdivision 2, including standards for heightened consideration of proprietary information for submissions for a cost review of a drug that is not yet approved by the FDA.

(c) Prior to the board establishing the standards under paragraph (b), the public shall be provided notice and the opportunity to submit comments.

(d) The establishment of standards under this subdivision is exempt from the rulemaking requirements under chapter 14, and section 14.386 does not apply.



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III. Procedures for Protection of Proprietary and Trade Secret Data

The Board has developed this policy with public notice and the opportunity for the public to submit comments in order to consider the viewpoints of affected stakeholders. The Board accepts public comments at each of its public meetings and through submission on the Board website; any individual or entity that wants to submit comments on this policy or any issue may use those channels to provide comments on this policy, both before and after its adoption.



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Potential topics for coverage:

- A. Types of protections allowed (including heightened protection pursuant to section 62J.91, subd. 3b).
- B. Data sharing agreement with MDH (and others?)
- C. Method of submission and designation of protection to PDAB
- D. Use, storage, and destruction of data by PDAB members, employees, and contractors
- E. Open Meeting Law and closed meeting procedures
- F. MGDPA Policy
- G. Other related topics



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IV. Procedures for Challenges to Claims of Proprietary and Trade Secret Protections

V. Board's Oversight Role as to Employees and Contractors

Although members must ensure their own compliance with this policy, they should also recognize their additional responsibility in overseeing compliance with the statutes and this policy for Board employees and contractors.

VI. Annual Review and Training

The Board shall review this policy on an annual basis and conduct periodic training for members at the discretion of the Board.



MDH's Data Policy & Other States' PDAB Policies

- MDH *Form and Manner for Prescription Drug Price Data Sets*; and
- Colorado,
- Maryland, and
- Washington PDAB policies on proprietary information are included for your reference.