Chapter 651

(House Bill 1296)

AN ACT concerning

Prescription Drug Monitoring Program – Review and Reporting of Possible Misuse or Abuse of Monitored Prescription Drugs

FOR the purpose of authorizing the Prescription Drug Monitoring Program, in accordance with certain regulations, to review prescription monitoring data for a certain purpose and, under certain circumstances, report possible misuse or abuse of a monitored prescription drug to a certain prescriber or dispenser; requiring the Program, before reporting the possible misuse or abuse of a monitored prescription drug, to obtain from the technical advisory committee to the Program certain clinical guidance and interpretation; requiring the Secretary of Health and Mental Hygiene to adopt regulations that specify the process for the Program's review of prescription monitoring data and reporting of possible misuse or abuse of a monitored prescription drug; altering the purpose of the technical advisory committee; making a stylistic change; and generally relating to the Prescription Drug Monitoring Program and the review of prescription monitoring data and reporting of possible misuse or abuse of a monitored prescription drug.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 21–2A–02(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 21–2A–04, 21–2A–06, and 21–2A–07
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

21–2A–02.

(a) There is a Prescription Drug Monitoring Program in the Department.

21–2A–04.

(a) The Secretary, in consultation with the Board, shall adopt regulations to carry out this subtitle.

(b) The regulations adopted by the Secretary shall:

(1) Specify the prescription monitoring data required to be submitted under § 21–2A–03 of this subtitle;

(2) Specify the electronic or other means by which information is to be submitted:

(i) Without unduly increasing the workload and expense on dispensers; and

(ii) In a manner as compatible as possible with existing data submission practices of dispensers;

(3) Specify that the Program:

(i) Shall provide the information technology software to dispensers necessary to upload prescription drug monitoring data to the Program; and

(ii) May not impose any fees or other assessments on prescribers or dispensers to support the operation of the Program;

(4) Specify that a prescriber or dispenser is not required or obligated to access or use prescription monitoring data available under the Program;

(5) Identify the mechanism by which prescription monitoring data are disclosed to a person, in accordance with § 21–2A–06 of this subtitle;

(6) Identify the circumstances under which a person may disclose prescription monitoring data received under the Program;

(7) SPECIFY THE PROCESS FOR THE PROGRAM'S REVIEW OF PRESCRIPTION MONITORING DATA AND REPORTING OF POSSIBLE MISUSE OR ABUSE OF A MONITORED PRESCRIPTION DRUG UNDER § 21–2A–06(C) OF THIS SUBTITLE;

[(7)**] (8)** Establish requirements for Program retention of prescription monitoring data for 3 years; and

[(8)**] (9)** Require that:

(i) Confidential or privileged patient information be kept confidential; and

(ii) Records or information protected by a privilege between a health care provider and a patient, or otherwise required by law to be held confidential, be filed in a manner that, except as otherwise provided in § 21–2A–06 of this subtitle, does not disclose the identity of the person protected.

21–2A–06.

(a) Prescription monitoring data:

(1) Are confidential and privileged, and not subject to discovery, subpoena, or other means of legal compulsion in civil litigation;

(2) Are not public records; and

(3) Except as provided in subsections **[**(b) and (d)**]** **(B), (C), AND (E)** of this section or as otherwise provided by law, may not be disclosed to any person.

(b) The Program shall disclose prescription monitoring data, in accordance with regulations adopted by the Secretary, to:

(1) A prescriber, or a licensed health care practitioner authorized by the prescriber, in connection with the medical care of a patient;

(2) A dispenser, or a licensed health care practitioner authorized by the dispenser, in connection with the dispensing of a monitored prescription drug;

(3) A federal law enforcement agency or a State or local law enforcement agency, on issuance of a subpoena, for the purpose of furthering an existing bona fide individual investigation;

(4) A licensing entity, on issuance of an administrative subpoena voted on by a quorum of the board of the licensing entity, for the purposes of furthering an existing bona fide individual investigation;

(5) A rehabilitation program under a health occupations board, on issuance of an administrative subpoena;

(6) A patient with respect to prescription monitoring data about the patient;

(7) Subject to subsection **[**(g)**]** **(H)** of this section, the authorized administrator of another state's prescription drug monitoring program;

(8) The following units of the Department, on approval of the Secretary, for the purpose of furthering an existing bona fide individual investigation:

(i) The Office of the Chief Medical Examiner;

(ii) The Maryland Medical Assistance Program;

(iii) The Office of the Inspector General;

(iv) The Office of Health Care Quality; and

(v) The Division of Drug Control; or

(9) The technical advisory committee established under § 21–2A–07 of this subtitle for the purposes set forth in **[**subsection (c)**]** **SUBSECTIONS (C) AND (D)** of this section.

(C) (1) IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY:

(I) THE PROGRAM MAY REVIEW PRESCRIPTION MONITORING DATA FOR INDICATIONS OF POSSIBLE MISUSE OR ABUSE OF A MONITORED PRESCRIPTION DRUG; AND

(II) IF THE PROGRAM'S REVIEW OF PRESCRIPTION MONITORING DATA INDICATES POSSIBLE MISUSE OR ABUSE OF A MONITORED PRESCRIPTION DRUG, THE PROGRAM MAY REPORT THE POSSIBLE MISUSE OR ABUSE TO THE PRESCRIBER OR DISPENSER OF THE MONITORED PRESCRIPTION DRUG.

(2) BEFORE THE PROGRAM REPORTS THE POSSIBLE MISUSE OR ABUSE OF A MONITORED PRESCRIPTION DRUG TO A PRESCRIBER OR DISPENSER UNDER THIS SUBSECTION, THE PROGRAM SHALL OBTAIN FROM THE TECHNICAL ADVISORY COMMITTEE:

(I) CLINICAL GUIDANCE REGARDING INDICATIONS OF POSSIBLE MISUSE OR ABUSE; AND

(II) INTERPRETATION OF THE PRESCRIPTION MONITORING DATA THAT INDICATES POSSIBLE MISUSE OR ABUSE.

[(c)**]** **(D)** Before the Program discloses information under subsection (b)(3), (4), (5), (7), or (8) of this section, the technical advisory committee **[**to the Program**]** shall:

(1) Review the requests for information;

(2) Provide clinical guidance and interpretation of the information requested to the Secretary to assist in the Secretary's decision on how to respond to a judicial subpoena, administrative subpoena, or other request; and

(3) Provide clinical guidance and interpretation of the information requested to the authorized recipient of the information.

[(d)**] (E)** Except as provided by regulations adopted by the Secretary, a person who receives prescription monitoring data from the Program may not disclose the data.

[(e)**] (F)** (1) In addition to the disclosures required under subsection (b) of this section, the Program may disclose prescription monitoring data for research, analysis, public reporting, and education:

(i) After redaction of all information that could identify a patient, prescriber, dispenser, or any other individual; and

(ii) In accordance with regulations adopted by the Secretary.

(2) The Secretary may require submission of an abstract explaining the scope and purpose of the research, analysis, public reporting, or education before disclosing prescription monitoring data under this subsection.

[(f)**] (G)** The Office of the Attorney General may seek appropriate injunctive or other relief to maintain the confidentiality of prescription monitoring data as required under this section.

[(g)**] (H)** The Program may provide prescription monitoring data to another state's prescription drug monitoring program only if the other state's prescription drug monitoring program agrees to use the prescription monitoring data in a manner consistent with the provisions of this subtitle.

[(h)**] (I)** The Program may:

(1) Request and receive prescription monitoring data from another state's prescription drug monitoring program and use the prescription monitoring data in a manner consistent with the provisions of this subtitle; and

(2) Develop the capability to transmit prescription monitoring data to and receive prescription monitoring data from other prescription drug monitoring programs employing the standards of interoperability.

[(i)**] (J)** The Program may enter into written agreements with other states' prescription drug monitoring programs for the purpose of establishing the terms and conditions for sharing prescription monitoring data under this section.

[(j)**] (K)** Prescription monitoring data may not be used as the basis for imposing clinical practice standards.

21–2A–07.

(a) There is a technical advisory committee to the Program.

(b) The purpose of the technical advisory committee is to **[**review**]:**

(1) REVIEW requests for information from the Program under § 21–2A–06(b)(3), (4), (5), (7), and (8) of this subtitle**; AND**

(2) PROVIDE CLINICAL GUIDANCE AND INTERPRETATION TO THE PROGRAM REGARDING INDICATIONS OF POSSIBLE MISUSE OR ABUSE OF A MONITORED PRESCRIPTION DRUG UNDER § 21–2A–06(C)(3) OF THIS SUBTITLE.

(c) The technical advisory committee consists of the following members, appointed by the Secretary:

(1) A board certified anesthesiologist licensed and practicing in the State, nominated by the Maryland Society of Anesthesiologists;

(2) A certified addiction medicine specialist licensed and practicing in the State, nominated by the Maryland Society for Addiction Medicine;

(3) A pharmacist licensed and practicing in the State;

(4) A medical professional, licensed and practicing in the State, who is treating cancer patients; and

(5) A board certified physician specializing in the treatment of patients with pain, licensed and practicing in the State, nominated by the Maryland Society of Physical Medicine and Rehabilitation.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.

Approved by the Governor, May 15, 2014.