SENATE BILL 1007

J1 8lr2087

By: **Senator Pinsky**
Introduced and read first time: February 5, 2018
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Prescription Drug Monitoring Program – Opioid Data – Disclosure

FOR the purpose of requiring the Prescription Drug Monitoring Program to disclose prescription drug monitoring data, in accordance with certain regulations, on the approval of the Secretary of Health, to the Attorney General for a certain purpose; requiring, rather than authorizing, the Program to make a certain notification and provide certain education to a certain prescriber or dispenser; requiring that the notification be made and the education be provided within a certain period of time; requiring the Program to notify certain law enforcement agencies for further investigation if the Program makes a certain determination that there is a possible violation of law or breach of professional standards regarding the misuse or abuse of opioids under certain circumstances after a certain period of time; and generally relating to disclosure of opioid data and the Prescription Drug Monitoring Program.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 21–2A–02
Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 21–2A–06
Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

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

Article – Health – General

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

21–2A–02.

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

(b) The mission of the Program is to:

(1) Assist prescribers, pharmacists, and public health professionals in:

(i) The identification and prevention of prescription drug abuse; and

(ii) The identification and investigation of unlawful prescription drug diversion; and

(2) Promote a balanced use of prescription monitoring data to assist appropriate law enforcement activities while preserving the professional practice of health care providers and the access of patients to optimal pharmaceutical care.

(c) To carry out its mission, the Program shall monitor the prescribing and dispensing of all Schedule II, Schedule III, Schedule IV, and Schedule V controlled dangerous substances by all prescribers and dispensers in the State.

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), (c), (d), and (f) 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) The State Board of Physicians, on issuance of an administrative

subpoena voted on by a quorum of a disciplinary panel, as defined in § 14–101 of the Health Occupations Article, for the purposes of furthering an existing bona fide investigation of an individual;

(5) A licensing entity other than the State Board of Physicians, 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;

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

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

(8) Subject to subsection (i) of this section, the authorized administrator of another state's prescription drug monitoring program;

(9) 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 Office of Controlled Substances Administration;

(10) The technical advisory committee established under § 21–2A–07 of this subtitle for the purposes set forth in subsections (c), (d), and (e) of this section; **[**or**]**

(11) ON THE APPROVAL OF THE SECRETARY, THE ATTORNEY GENERAL FOR THE PURPOSE OF LAW ENFORCEMENT REGARDING THE MISUSE OR ABUSE OF PRESCRIPTION OPIOIDS; OR

[(11)**] (12)** The following entities, on approval of the Secretary and for the purpose of furthering an existing bona fide individual case review:

(i) The State Child Fatality Review Team or a local child fatality review team established under Title 5, Subtitle 7 of this article, on request from the chair of the State or local team;

(ii) A local drug overdose fatality review team established under § 5–902 of this article, on request from the chair of the local team;

(iii) The Maternal Mortality Review Program established under § 13–1203 of this article, on request from the Program; and

(iv) A medical review committee described in § 1–401(b)(3) of the Health Occupations Article, on request from the committee.

(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 may 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.

(d) (1) In accordance with regulations adopted by the Secretary, the Program may review prescription monitoring data for indications of a possible violation of law or a possible breach of professional standards by a prescriber or a dispenser.

(2) Subject to paragraph (3) of this subsection, if the Program's review indicates a possible violation of law or a possible breach of professional standards by a prescriber or a dispenser, the Program **[**may**]** **SHALL, WITHIN 60 DAYS**:

(i) Notify the prescriber or dispenser of the possible violation of law or possible breach of professional standards; and

(ii) Provide education to the prescriber or dispenser.

(3) Before the Program provides notification of a possible violation of law or a possible breach of professional standards to a prescriber or a dispenser, the Program shall obtain from the technical advisory committee:

(i) Clinical guidance regarding indications of a possible violation of law or a possible breach of professional standards; and

(ii) Interpretation of the prescription monitoring data that indicates

a possible violation of law or a possible breach of professional standards.

(4) THE PROGRAM SHALL NOTIFY FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OF A POSSIBLE VIOLATION OF LAW OR BREACH OF PROFESSIONAL STANDARDS REGARDING THE MISUSE OR ABUSE OF OPIOIDS BY A PRESCRIBER OR DISPENSER:

(I) AFTER OBTAINING THE INFORMATION REQUIRED FROM THE TECHNICAL ADVISORY COMMITTEE UNDER PARAGRAPH (3) OF THIS SUBSECTION;

(II) AFTER PROVIDING NOTICE AND EDUCATION TO THE PRESCRIBER OR DISPENSER IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION; AND

(III) 6 MONTHS AFTER THE DATE OF INITIAL NOTICE AND EDUCATION WAS PROVIDED TO THE PRESCRIBER OR DISPENSER UNDER PARAGRAPH (2) OF THIS SUBSECTION, IF ANOTHER PROGRAM REVIEW INDICATES THERE IS STILL A POSSIBLE VIOLATION OF LAW OR BREACH OF PROFESSIONAL STANDARDS SINCE THE RECEIPT OF NOTIFICATION AND EDUCATION FROM THE PROGRAM.

(e) (1) Before the Program discloses information under subsection (b)(3), (5), (6), (8), or (9) of this section, the Program may request that the technical advisory committee:

(i) Review the requests for information;

(ii) 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

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

(2) The Program, in consultation with the Board, shall consider policies and procedures for determining the circumstances in which the review of requests for information and the provision of clinical guidance and interpretation of information by the technical advisory committee under paragraph (1) of this subsection is feasible and desirable.

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

(g) (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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) Prescription monitoring data may not be used as the basis for imposing clinical practice standards.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.