

SENATE BILL 1083

J1, J2

8lr3589
CF HB 88

By: **Senators Klausmeier, Miller, Mathias, and Pinsky**

Introduced and read first time: February 12, 2018

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Prescription Drug Monitoring Program – Revisions**

3 FOR the purpose of requiring, instead of authorizing, the Prescription Drug Monitoring
4 Program to review prescription monitoring data for indications of a possible misuse
5 or abuse of a monitored prescription drug; requiring, instead of authorizing, the
6 Program to report the possible misuse or abuse to the prescriber or dispenser of the
7 monitored prescription drug under certain circumstances; requiring the Program to
8 provide education to the prescriber or dispenser of the monitored prescription drug
9 under certain circumstances; requiring, instead of authorizing, the Program to
10 review prescription monitoring data for indications of a possible violation of law or a
11 possible breach of professional standards by a prescriber or a dispenser; requiring,
12 instead of authorizing, the Program to notify the prescriber or dispenser of the
13 possible violation of law or possible breach of professional standards and provide
14 education to the prescriber or dispenser; authorizing the Program to notify the
15 appropriate law enforcement agency or health occupations board of a possible
16 violation of law or a possible breach of professional standards by a prescriber or
17 dispenser; requiring the Program, under certain circumstances, to provide the law
18 enforcement agency or health occupations board with the prescription monitoring
19 data necessary for an investigation; altering the circumstances under which the
20 Program is required to obtain certain guidance and interpretation from the technical
21 advisory committee; requiring the Program to take into account certain factors in
22 making a certain determination; prohibiting the obtaining of certain guidance and
23 interpretation from the technical advisory committee from delaying the reporting of
24 a possible violation of law or a possible breach of professional standards to a law
25 enforcement agency or a health occupations board under certain circumstances;
26 making a conforming change; and generally relating to the Prescription Drug
27 Monitoring Program.

28 BY repealing and reenacting, without amendments,

29 Article – Health – General

30 Section 21–2A–02(a), 21–2A–04, 21–2A–06(a) and (b), and 21–2A–07(a) and (b)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2015 Replacement Volume and 2017 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Health – General
5 Section 21–2A–06(c) and (d)
6 Annotated Code of Maryland
7 (2015 Replacement Volume and 2017 Supplement)

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

10 **Article – Health – General**

11 21–2A–02.

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

13 21–2A–04.

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

16 (b) The regulations adopted by the Secretary shall:

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

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

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

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

25 (3) Specify that the information be submitted by dispensers once every 24
26 hours;

27 (4) Specify that the Program:

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

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

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

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

5 (7) Specify the process for the Program's review of prescription monitoring
6 data and reporting of:

7 (i) Possible misuse or abuse of a monitored prescription drug under
8 § 21-2A-06(c) of this subtitle; or

9 (ii) A possible violation of law or possible breach of professional
10 standards under § 21-2A-06(d) of this subtitle;

11 (8) Establish requirements for Program retention of prescription
12 monitoring data for 3 years; and

13 (9) Require that:

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

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

20 21-2A-06.

21 (a) Prescription monitoring data:

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

24 (2) Are not public records; and

25 (3) Except as provided in subsections (b), (c), (d), and (f) of this section or
26 as otherwise provided by law, may not be disclosed to any person.

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

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

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

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

6 (4) The State Board of Physicians, on issuance of an administrative
7 subpoena voted on by a quorum of a disciplinary panel, as defined in § 14–101 of the Health
8 Occupations Article, for the purposes of furthering an existing bona fide investigation of an
9 individual;

10 (5) A licensing entity other than the State Board of Physicians, on issuance
11 of an administrative subpoena voted on by a quorum of the board of the licensing entity,
12 for the purposes of furthering an existing bona fide individual investigation;

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

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

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

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

21 (i) The Office of the Chief Medical Examiner;

22 (ii) The Maryland Medical Assistance Program;

23 (iii) The Office of the Inspector General;

24 (iv) The Office of Health Care Quality; and

25 (v) The Office of Controlled Substances Administration;

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

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

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

1 (ii) A local drug overdose fatality review team established under §
2 5–902 of this article, on request from the chair of the local team;

3 (iii) The Maternal Mortality Review Program established under §
4 13–1203 of this article, on request from the Program; and

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

7 (c) (1) In accordance with regulations adopted by the Secretary:

8 (i) The Program [may] **SHALL** review prescription monitoring data
9 for indications of possible misuse or abuse of a monitored prescription drug; and

10 (ii) If the Program’s review of prescription monitoring data indicates
11 possible misuse or abuse of a monitored prescription drug, the Program [may report]
12 **SHALL:**

13 **1. REPORT** the possible misuse or abuse to the prescriber or
14 dispenser of the monitored prescription drug; **AND**

15 **2. PROVIDE EDUCATION TO THE PRESCRIBER OR**
16 **DISPENSER.**

17 (2) Before the Program reports the possible misuse or abuse of a monitored
18 prescription drug to a prescriber or dispenser under this subsection, the Program may
19 obtain from the technical advisory committee:

20 (i) Clinical guidance regarding indications of possible misuse or
21 abuse; and

22 (ii) Interpretation of the prescription monitoring data that indicates
23 possible misuse or abuse.

24 (d) (1) In accordance with regulations adopted by the Secretary **AND SUBJECT**
25 **TO PARAGRAPH (3) OF THIS SUBSECTION**, the Program [may] **SHALL** review
26 prescription monitoring data for indications of a possible violation of law or a possible
27 breach of professional standards by a prescriber or a dispenser.

28 (2) [Subject to paragraph (3) of this subsection, if] **IF** the Program’s review
29 indicates a possible violation of law or a possible breach of professional standards by a
30 prescriber or a dispenser, the Program [may]:

31 (i) **1. [Notify] SHALL NOTIFY** the prescriber or dispenser of the
32 possible violation of law or possible breach of professional standards; and

1 [(ii)] 2. [Provide] **SHALL PROVIDE** education to the prescriber or
2 dispenser; **AND**

3 (ii) 1. **MAY NOTIFY THE APPROPRIATE LAW ENFORCEMENT**
4 **AGENCY OR HEALTH OCCUPATIONS BOARD OF THE POSSIBLE VIOLATION OF LAW OR**
5 **POSSIBLE BREACH OF PROFESSIONAL STANDARDS; AND**

6 2. **IF THE PROGRAM PROVIDES NOTICE UNDER ITEM 1**
7 **OF THIS ITEM, SHALL PROVIDE THE LAW ENFORCEMENT AGENCY OR HEALTH**
8 **OCCUPATIONS BOARD WITH THE PRESCRIPTION MONITORING DATA NECESSARY**
9 **FOR AN INVESTIGATION.**

10 (3) (i) [Before the Program provides notification of a possible violation
11 of law or a possible breach of professional standards to a prescriber or a dispenser, the] **IN**
12 **DETERMINING WHETHER ITS REVIEW INDICATES A POSSIBLE VIOLATION OF LAW OR**
13 **A POSSIBLE BREACH OF PROFESSIONAL STANDARDS BY A PRESCRIBER OR A**
14 **DISPENSER, THE Program shall [obtain]:**

15 1. **OBTAIN** from the technical advisory committee:

16 [(i)] A. Clinical guidance regarding indications of a possible
17 violation of law or a possible breach of professional standards; and

18 [(ii)] B. Interpretation of the prescription monitoring data that
19 indicates a possible violation of law or a possible breach of professional standards; **AND**

20 2. **TAKE INTO ACCOUNT THE PARTICULAR SPECIALTY,**
21 **CIRCUMSTANCES, PATIENT TYPE, AND LOCATION OF THE PRESCRIBER OR THE**
22 **DISPENSER.**

23 (ii) **OBTAINING CLINICAL GUIDANCE AND INTERPRETATION OF**
24 **PRESCRIPTION MONITORING DATA FROM THE TECHNICAL ADVISORY COMMITTEE**
25 **MAY NOT DELAY REPORTING OF A POSSIBLE VIOLATION OF LAW OR A POSSIBLE**
26 **BREACH OF PROFESSIONAL STANDARDS TO A LAW ENFORCEMENT AGENCY OR A**
27 **HEALTH OCCUPATIONS BOARD IF, IN THE JUDGMENT OF THE PROGRAM, A DELAY**
28 **COULD RESULT IN IMMINENT DANGER TO PUBLIC HEALTH OR PUBLIC SAFETY.**

29 21-2A-07.

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

31 (b) The purpose of the technical advisory committee is to:

1 (1) Review requests for information from the Program under §
2 21-2A-06(b)(3), (4), (5), (6), (8), or (9) of this subtitle; and

3 (2) Provide clinical guidance and interpretation to the Program regarding
4 indications of possible misuse or abuse of a monitored prescription drug or a possible
5 violation of law or a possible breach of professional standards by a prescriber or a dispenser
6 under § 21-2A-06(c) and (d) of this subtitle.

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