SB 333

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 333 (Senator Miller, *et al.*)

Education, Health, and Environmental Affairs Health and Government Operations

Prescription Drug Monitoring Program

This bill requires the Department of Health and Mental Hygiene (DHMH), in consultation with a newly established Advisory Board on Prescription Drug Monitoring, to establish a prescription drug monitoring program (PDMP) that electronically collects and stores data concerning "monitored prescription drugs."

Implementation of the program is contingent on the advisory board's obtaining federal, private, or State funds.

Fiscal Summary

State Effect: Assuming federal funding is obtained, DHMH federal and general fund expenditures could increase by $831,900 in FY 2007, including a one-time cost of $500,000 to design and implement the database system. Future year estimates reflect annualization and inflation. Revenues would not be significantly affected.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	$0	$0	$0	$0	$0
GF/FF Exp.	831,900	446,900	469,100	492,900	518,500
Net Effect	($831,900)	($446,900)	($469,100)	($492,900)	($518,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Potential meaningful. Small business pharmacies could incur additional costs to transmit required data to PDMP.

Analysis

Bill Summary: The program must monitor drugs that contain a substance listed in Schedule II through Schedule IV. For each monitored prescription drug that is dispensed, a dispenser must submit to PDMP information including: (1) a patient identifier; (2) the prescription drug dispensed; (3) the date of dispensing; (4) the quantity; (5) the prescriber; (6) the pharmacy from which the drug is dispensed; and (7) the prescriber's diagnosis code, if part of the dispenser's electronic record. Data may be shared with federal, State, or local law enforcement agencies or a licensure entity (authorized recipients) as needed. A dispenser must submit the data electronically to PDMP, although PDMP may authorize a dispenser to submit data by an alternative form of submission, or omit one or more data elements.

The bill establishes an Advisory Board on Prescription Drug monitoring within DHMH and specifies board terms and duties. The board will provide guidance on the design and implementation of PDMP, identify sources of funding, report annually to the Governor and the General Assembly on specified issues, and otherwise provide oversight of the program. PDMP, in consultation with the advisory board, must develop and implement education and training courses relating to the program.

The board and the Secretary of Health and Mental Hygiene may not charge a fee or impose an assessment on a hospital, dispenser, or prescriber for the establishment, maintenance, or administration of the program or for the transmission of information to and from the program.

The Secretary of Health and Mental Hygiene must appoint a multidisciplinary consultation team within PDMP. This team must assist federal, state, or local law enforcement agencies or licensing entities that receive prescription drug monitoring data with interpreting the data and considering whether these data, along with the nature of the prescriber's or dispenser's practice, a patient's medical condition, or any other relevant facts, suggest the need for further investigation.

Prescription monitoring data are confidential and privileged, not public record, and may not be disclosed to any person other than "authorized recipients." Prescription monitoring data are not subject to discovery, subpoena, or other means of legal compulsion in civil litigation. A dispenser who knowingly fails to submit prescription monitoring data is subject to a civil penalty not exceeding $500 for each failure to submit required information. An authorized recipient who knowingly discloses or uses prescription monitoring data in violation of the bill is guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a $10,000 fine.

DHMH must adopt regulations that assist health care providers and law enforcement professional in identifying, treating, and preventing prescription drug abuse and unlawful

prescription drug diversion. DHMH also must adopt regulations that ensure that confidential or privileged patient information is kept confidential and that records are destroyed after two years unless a law enforcement agency or health occupations board has submitted a written request to DHMH for the retention of specific information.

DHMH and its agents and employees are not subject to liability arising from inaccuracy of any information or the unauthorized use or disclosure of prescription monitoring data. An authorized recipient, acting in good faith, is not subject to liability arising solely from requesting or receiving, or failing to request or receive data from the program, or acting or failing to act on the basis of data provided by the program.

The PDMP may not collect prescription monitoring data before June 1, 2007. The board must submit an interim report to the General Assembly regarding the board's analysis and recommendations regarding design, implementation, and funding of the program within 180 days after its first meeting.

Current Law: The federal Controlled Substances Act of 1970 (CSA) authorizes federal regulation of the manufacture, importation, possession, and distribution of certain drugs. Under CSA, various drugs are listed on Schedules I through V, and generally involve drugs that have a high potential for abuse. Morphine and amphetamines are examples of Schedule II drugs; anabolic steroids are an example of a Schedule III drug; and benzodiazepines (such as Valium or Xanax) are Schedule IV drugs.

Background: Prescription drug abuse makes up almost one-third of all drug abuse in the U.S., and treatment admission rates have more than doubled in the past 10 years. Identifying abuse from a criminal justice perspective is difficult, since the drugs typically are purchased legally and then used for an unintended purpose or distributed to a different person.

State prescription drug monitoring programs address this issue by requiring pharmacies to log each prescription they fill. The reports created are stored in a state electronic database that typically includes the patient's name, address, type and amount of drug, prescribing physician's name, and other relevant information. Medical professionals can use this information to prevent abusers from obtaining prescriptions from multiple prescribers.

To date, 21 states operate PDMPs, and 18 other states are pursuing programs. State programs do not currently share prescription information with other states, which could lead to gaps in monitoring efforts. Oklahoma will be the first state to use its drug monitoring system to track the sales of pseudoephedrine, a common over-the-counter cold remedy used to manufacture methamphetamine.

Privacy and fraud concerns have been addressed through recommendations such as including language to notify patients if their information has been lost or stolen, and others want to ensure the program will not discourage doctors from prescribing needed pain medication or discourage patients from consulting a doctor of their choice.

Since 2002, the U.S. Congress has appropriated funds to the U.S. Department of Justice to support the Harold Rogers Prescription Drug Monitoring Program. This federal program has assisted states through grants as they plan, implement, or enhance a PDMP.

State Fiscal Effect: DHMH federal and general fund expenditures could increase by $831,897 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date and assumes the advisory board obtains some federal grant funding for the program. Implementation of the program is contingent on the receipt of federal, private, or State funding. Although it is not known how much federal funding the State could receive, other states have received from $350,000 to $400,000 to implement their own programs. It is assumed the State would use both federal and general funds to support the program.

This estimate reflects a one-time $500,000 cost for designing and implementing a database system. It also reflects the cost of seven new regular positions to oversee the program, handle database changes, and coordinate with authorized recipients of monitored prescription drug data. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	7
Salaries and Fringe Benefits	$253,954
One-time Database Implementation Cost	500,000
Other Operating Expenses	77,943
Total FY 2007 Expenditures	**$831,897**

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The criminal penalty provisions of this bill are not expected to significantly affect State revenues or expenditures.

Additional Comments: To the extent PDMP reduces illegal activity and/or substance abuse, federal, state, and local law enforcement and public health care costs could decrease. According to the Government Accounting Office (GAO), states with monitoring programs have experienced considerable reduction in the time and effort required by law enforcement and regulatory investigators to explore leads and the merits of possible drug diversion cases. GAO also found that the presence of a monitoring

program in a state may help to reduce illegal drug diversion there; however, diversion activities could increase in contiguous states that do not have such programs. There are insufficient data at this time to reliably estimate any savings to enforcement agencies.

Additional Information

Prior Introductions: None.

Cross File: HB 1287 (Delegate Kullen, *et al.*) – Health and Government Operations.

Information Source(s): *Prescription Drug Monitoring Programs* (January 2006), National Conference of State Legislatures; *State Monitoring Programs May Help to Reduce Illegal Diversion* (March 2004), General Accounting Office; Department of Health and Mental Hygiene; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2006
ncs/jr Revised - Senate Third Reader - March 31, 2006
Revised - Enrolled Bill - April 20, 2006

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