SB 401

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 401 (Senator Stone)
Finance

Public Health - Ephedrine, Pseudoephedrine, or Phenylpropanolamine Purchases - Statewide Electronic Logbook

This bill requires the Alcohol and Drug Abuse Administration to track the sale of ephedrine, pseudoephedrine, and phenylpropanolamine.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: General fund expenditures related to the contracting costs of establishing and maintaining a statewide real-time electronic logbook to track purchases could increase by $726,300 in FY 2010 which reflects a three-month start-up delay after the bill's July 1, 2009 effective date. Future years reflect annualization and inflation. General fund revenues could increase minimally due to the bill's monetary penalty provisions.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	-	-	-	-	-
GF Expenditure	726,300	428,600	444,800	461,700	479,300
Net Effect	($726,300)	($428,600)	($444,800)	($461,700)	($479,300)

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

Local Effect: The bill's monetary penalty provisions are not expected to significantly affect local finances or operations.

Small Business Effect: The effect of the bill on small business pharmacies and pharmacists would be minimal.

Analysis

Bill Summary: To purchase an ephedrine, pseudoephedrine, or phenylpropanolamine product, a person has to produce valid photo identification and sign an electronic log or receipt that shows the transaction's date, the person's name, and the amount of product purchased. Pharmacies and retailers have to maintain an electronic log of product purchases and enter transaction information into a real-time statewide electronic logbook maintained by ADAA.

The electronic logbook will be equipped to calculate both State and federal ephedrine, pseudoephedrine, or phenylpropanolamine purchase limits. Information in the logbook is confidential and not subject to the Freedom of Information Act. However, access will be granted to • a person authorized to prescribe or dispense products containing ephedrine, pseudoephedrine, or phenylpropanolamine for the purpose of providing medical care or pharmaceutical care; • a local, State, or federal law enforcement official or prosecutor; and • a local, State, or federal official who requests access for the purpose of facilitating product recall necessary for public health and safety protection.

ADAA can destroy a logbook transaction record within two years of its entry date unless the transaction record is being used in a criminal investigation or proceeding.

A pharmacy or retailer who violates the bill's purchasing provisions is guilty of a misdemeanor and on conviction is subject to a fine of up to $10,000. In addition, any person who releases or discloses confidential information to an unauthorized person or obtains confidential information for an unauthorized purpose is guilty of a misdemeanor and on conviction is subject to a fine of up to $10,000.

Electronic logbook establishment and maintenance is contingent on funds being included in the annual State budget for ADAA for this purpose.

Current Law: A person may not dispense a controlled dangerous substance without a written prescription from an authorized provider if the substance is • listed in Schedule II; and • a drug limited to prescription use under the Health-General Article. Such a controlled dangerous substance may only be dispensed without a written prescription by • an authorized provider who is not a pharmacist and who dispenses the controlled dangerous substance directly to an ultimate user; or • a pharmacist if an emergency exists, the pharmacist dispenses the drug under regulations of DHMH on an oral prescription that the pharmacist reduces promptly to writing and keeps on file, and federal law authorizes the oral prescription.

A prescription for a controlled dangerous substance listed in Schedule II has to be kept on file in conformity with applicable requirements for records and inventories of these

provisions. A person may not refill a prescription for a controlled dangerous substance listed in Schedule II.

Currently, Maryland law subjects a person convicted of manufacturing methamphetamine to maximum imprisonment of 5 years and subjects a person convicted of importation to a maximum of 25 years.

As of September 30, 2006, federal law requires retail stores to keep over-the-counter medications containing pseudoephedrine behind the counter or in a locked cabinet. Purchasers have to show photo identification and sign a logbook. Federal law also limits the quantities of cold medication that a consumer may purchase daily. The federal law does not preempt state laws that have stricter provisions concerning pseudoephedrine purchases or possession.

Background: Pseudoephedrine is a decongestant in several over-the-counter medications used to relieve nasal discomfort caused by colds, allergies, and hay fever. This medication is sometimes prescribed for other uses.

Pseudoephedrine is also used to make methamphetamine, a Schedule II controlled dangerous substance. A substance is listed in Schedule II if the substance includes a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system: • amphetamine, its salts, optical isomers, and salts of its optical isomers; • phenmetrazine and its salts; • a substance that contains any methamphetamine, including salts, optical isomers, and salts of its optical isomers, in combination with one or more active nonnarcotic ingredients in recognized therapeutic amounts; • methylphenidate; and • methamphetamine, its salts, optical isomers, and salts of optical isomers.

Federal officials have called methamphetamine "the fastest growing drug threat in the United States." Its popularity began 20 years ago in the Southwest and is steadily advancing across the country. Surveys of county law enforcement officials conducted by the National Association of Counties in 2005 and 2006 concluded each year that methamphetamine is the leading drug-related law enforcement problem in the country. The 2006 survey supported the assertion that the program has been advancing eastward by showing a marked increase in the methamphetamine problem in southeastern states with a smaller increase in the northeastern states. At least 39 states have passed laws establishing or enhancing restrictions on the sale of over-the-counter pseudoephedrine products.

As is true nationwide, methamphetamine users in Maryland have historically been concentrated in rural areas. The most likely users are white, working class, in their

twenties or thirties, and almost as likely to be female as male. However, use among white-collar professionals and long-distance truckers is increasing.

The Maryland Board of Pharmacy repeatedly proposed a regulation requiring a pharmacy to keep single-entity pseudoephedrine products in a secured area with the prescription drugs. Pseudoephedrine would only be dispensed to people who are age 18 or older with a valid government-issued driver's license or identification card that includes the date of birth. This regulation would not apply to pseudophedrine products dispensed with a prescription. The board withdrew the regulation in July of 2007 because of the passage of federal legislation.

To date, methamphetamine's impact in Maryland is minimal. In 2005, 8 methamphetamine labs were *identified* in the State, 1 dumpsite was found, 10 parcels were seized, and 4 residential searches occurred. As of November 2006, 5 labs had been s*eized* in the State. According to the U.S. Drug Enforcement Administration, surrounding states report many more methamphetamine lab incidents. In Virginia, 52 labs were seized in 2005 compared to 5 in 2001. Methamphetamine lab incidents in West Virginia increased from 17 to 213 from 2001 to 2004 and from 18 to 79 during the same period in Pennsylvania.

According to DHMH, there are 1,128 resident pharmacies, 336 nonresident pharmacies, 104 waiver pharmacies, and 8,080 pharmacists in the State.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures could increase by an estimated $726,291 in fiscal 2010 which accounts for a three-month start-up delay after the July 1, 2009 effective date. The estimate reflects contracting costs incurred by ADAA to contract an outside agency to develop and manage the electronic logbook system. ADAA advises that it would model the electronic logbook contract after its current State of Maryland Automated Record Tracking Application contract with the University of Maryland. The contract would include the hiring of six full-time contractors, (two programmers, one system engineer, one help desk/support/tester, and two trainers) and one part-time program supervisor ($544,687). Trainers and supervisors would be expected to travel to pharmacies in the State that need technical assistance. Therefore, the estimate includes travel reimbursement for trainers and the supervisor ($8,333), telecommunications costs ($1,706), and as rental costs for all of the positions ($22,748). The estimate also reflects one-time start-up costs ($71,000) related to the software and hardware necessary for the electronic logbook, and 12% in overhead costs ($77,817).

The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Positions	6.1
Salaries and Fringe Benefits	$544,687
Operating Expenses	110,604
Start-up Costs	71,000
Total FY 2010 State Expenditures	**$766,921**

Future years reflect ongoing contracting costs. This includes • 4% annual salary increases; • 2% annual increases in ongoing operating expenses; and • the need for one less trainer and one less programmer necessary to maintain the electronic logbook and assist pharmacies in the State.

Additional Information

Prior Introductions: Similar bills, SB 774 and its cross file HB 41, were introduced in the 2006 session. Both bills received unfavorable committee reports.

Cross File: None.

Information Source(s): National Conference of State Legislatures, Food and Drug Administration, Department of Health and Mental Hygiene, Department of Legislative Services

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