

HOUSE BILL 3

J1, J2

5lr0371

(PRE-FILED)

By: **Delegate Schulz**

Requested: September 4, 2014

Introduced and read first time: January 14, 2015

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Prescription Drug Monitoring Program – Prescribers and Dispensers –**
3 **Required Query**

4 FOR the purpose of requiring regulations adopted by the Secretary of Health and Mental
5 Hygiene for the Prescription Drug Monitoring Program to require a prescriber and a
6 dispenser to query the Program before prescribing or dispensing a monitored
7 prescription drug to a patient; requiring, except under certain circumstances, a
8 prescriber and a dispenser to query the Program for a certain purpose before
9 prescribing or dispensing a monitored prescription drug to a patient; authorizing a
10 prescriber to authorize a designee to query the Program on the prescriber's behalf
11 under certain circumstances; repealing a certain prohibition against a prescriber or
12 a dispenser being subject to disciplinary action arising solely from certain actions;
13 making a prescriber or a dispenser who violates certain provisions of law relating to
14 a query of the Program subject to certain disciplinary action; making a certain
15 technical correction; and generally relating to the Prescription Drug Monitoring
16 Program and required queries by prescribers and dispensers.

17 BY repealing and reenacting, without amendments,
18 Article – Health – General
19 Section 21–2A–01(a), (d), (e), (f), and (h) through (k)
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2014 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Health – General
24 Section 21–2A–04, 21–2A–08(b), and 21–2A–09
25 Annotated Code of Maryland
26 (2009 Replacement Volume and 2014 Supplement)

27 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Health – General
2 Section 21–2A–04.1
3 Annotated Code of Maryland
4 (2009 Replacement Volume and 2014 Supplement)

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

7 **Article – Health – General**

8 21–2A–01.

9 (a) In this subtitle the following words have the meanings indicated.

10 (d) (1) “Dispenser” means a person authorized by law to dispense a monitored
11 prescription drug to a patient or the patient’s agent in the State.

12 (2) “Dispenser” includes a nonresident pharmacy.

13 (3) “Dispenser” does not include:

14 (i) A licensed hospital pharmacy that only dispenses a monitored
15 prescription drug for direct administration to an inpatient of the hospital;

16 (ii) An opioid maintenance program;

17 (iii) A veterinarian licensed under Title 2, Subtitle 3 of the
18 Agriculture Article when prescribing controlled substances for animals in the usual course
19 of providing professional services;

20 (iv) A pharmacy issued a waiver permit under COMAR 10.34.17.03
21 that provides pharmaceutical specialty services exclusively to persons living in assisted
22 living facilities, comprehensive care facilities, and developmental disabilities facilities; and

23 (v) A pharmacy that:

24 1. Dispenses medications to an inpatient hospice; and

25 2. Has been granted a waiver under § 21–2A–03(f) of this
26 subtitle.

27 (e) “Licensing entity” means an entity authorized under the Health Occupations
28 Article to license, regulate, or discipline a prescriber or dispenser.

29 (f) “Monitored prescription drug” means a prescription drug that contains a
30 Schedule II, Schedule III, Schedule IV, or Schedule V controlled dangerous substance
31 designated under Title 5, Subtitle 4 of the Criminal Law Article.

1 (h) “Prescriber” means a licensed health care professional authorized by law to
2 prescribe a monitored prescription drug.

3 (i) “Prescription drug” has the meaning stated in § 21–201 of this title.

4 (j) “Prescription monitoring data” means the information submitted to the
5 Program for a monitored prescription drug.

6 (k) “Program” means the Prescription Drug Monitoring Program established
7 under this subtitle.

8 21–2A–04.

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

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

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

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

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

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

20 (3) Specify that the Program:

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

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

25 (4) [Specify that a prescriber or dispenser is not required or obligated to
26 access or use prescription monitoring data available under the Program] **REQUIRE A
27 PRESCRIBER AND A DISPENSER TO QUERY THE PROGRAM IN ACCORDANCE WITH §
28 21–2A–04.1 OF THIS SUBTITLE BEFORE PRESCRIBING OR DISPENSING A
29 MONITORED PRESCRIPTION DRUG TO A PATIENT;**

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

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

3 (7) Specify the process for the Program's review of prescription monitoring
4 data and reporting of possible misuse or abuse of a monitored prescription drug under §
5 21-2A-06(c) of this subtitle;

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

8 (9) Require that:

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

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

15 **21-2A-04.1.**

16 (A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
17 PRESCRIBER AND A DISPENSER SHALL QUERY THE PROGRAM, FOR THE PURPOSE
18 OF REVIEWING THE PATIENT'S PRESCRIPTION MONITORING DATA, BEFORE
19 PRESCRIBING OR DISPENSING A MONITORED PRESCRIPTION DRUG TO A PATIENT.

20 (B) A PRESCRIBER MAY AUTHORIZE A DESIGNEE TO QUERY THE PROGRAM
21 ON THE PRESCRIBER'S BEHALF IF:

22 (1) THE DESIGNEE IS EMPLOYED BY OR UNDER CONTRACT WITH THE
23 SAME PROFESSIONAL PRACTICE AS THE PRESCRIBER;

24 (2) THE PRESCRIBER TAKES REASONABLE STEPS TO ENSURE THAT
25 THE DESIGNEE IS COMPETENT IN THE USE OF THE PROGRAM;

26 (3) THE PRESCRIBER REMAINS RESPONSIBLE FOR:

27 (I) ENSURING THAT ACCESS TO THE PROGRAM BY THE
28 DESIGNEE IS LIMITED TO PURPOSES AUTHORIZED BY LAW AND OCCURS IN A
29 MANNER THAT PROTECTS THE CONFIDENTIALITY OF THE INFORMATION OBTAINED
30 FROM THE PROGRAM; AND

31 (II) ANY BREACH OF CONFIDENTIALITY; AND

1 **(4) THE DECISION AS TO WHETHER OR NOT TO PRESCRIBE A**
2 **MONITORED PRESCRIPTION DRUG FOR A PATIENT:**

3 **(I) REMAINS WITH THE PRESCRIBER; AND**

4 **(II) IS REASONABLY INFORMED BY THE PRESCRIPTION**
5 **MONITORING DATA OBTAINED FROM THE PROGRAM.**

6 **(C) A PRESCRIBER OR A DISPENSER IS NOT REQUIRED TO QUERY THE**
7 **PROGRAM IF:**

8 **(1) THE PROGRAM IS NOT OPERATIONAL, AS DETERMINED BY THE**
9 **DEPARTMENT;**

10 **(2) THE PRESCRIBER OR THE DISPENSER IS UNABLE TO ACCESS THE**
11 **PROGRAM DUE TO A TEMPORARY TECHNOLOGICAL OR ELECTRICAL PROBLEM; OR**

12 **(3) QUERYING THE PROGRAM WOULD PREVENT A PATIENT FROM**
13 **OBTAINING A PRESCRIPTION IN A TIMELY MANNER AND POTENTIALLY HARM THE**
14 **PATIENT'S HEALTH.**

15 21-2A-08.

16 (b) A prescriber or dispenser, acting in good faith, is not subject to liability [or
17 disciplinary action] arising solely from:

18 (1) Requesting or receiving, or failing to request or receive, prescription
19 monitoring data from the Program; or

20 (2) Acting, or failing to act, on the basis of prescription monitoring data
21 provided by the Program.

22 21-2A-09.

23 (a) A dispenser who knowingly fails to submit prescription monitoring data to the
24 Program as required under this subtitle shall be subject to a civil penalty not exceeding
25 \$500 for each failure to submit required information.

26 (b) (1) A person who knowingly discloses, uses, obtains, or attempts to obtain
27 by fraud or deceit, prescription monitoring data in violation of this subtitle shall be guilty
28 of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a
29 fine not exceeding \$10,000 or both.

1 (2) In addition to the penalties under paragraph (1) of this subsection, a
2 prescriber or dispenser who knowingly discloses or uses prescription monitoring data in
3 violation of this subtitle shall be subject to disciplinary action by the appropriate licensing
4 entity.

5 **(3) A PRESCRIBER OR A DISPENSER WHO VIOLATES § 21-2A-04.1 OF**
6 **THIS SUBTITLE SHALL BE SUBJECT TO DISCIPLINARY ACTION BY THE APPROPRIATE**
7 **LICENSING ENTITY.**

8 **[(3)] (4)** The release of prescription monitoring data by a prescriber or A
9 dispenser to a licensed health care professional solely for treatment purposes in a manner
10 otherwise consistent with State and federal law is not a violation of this subtitle.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2015.