

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 3 (Delegate Schulz)
 Health and Government Operations

Prescription Drug Monitoring Program - Prescribers and Dispensers - Required Query

This bill requires a prescriber and a dispenser, except under specified circumstances, to query the Prescription Drug Monitoring Program (PDMP) to review a patient’s prescription monitoring data before prescribing or dispensing a monitored prescription drug. A prescriber or dispenser who violates this requirement is subject to disciplinary action by the appropriate licensing entity.

Fiscal Summary

State Effect: General fund expenditures for PDMP increase by an estimated \$1.7 million in FY 2016 for personnel and contractual services to implement and enforce the bill. Revenues are not affected. Future years reflect annualization, inflation, elimination of one-time costs, and ongoing maintenance of associated information technology (IT) infrastructure.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,723,200	693,900	697,900	702,200	706,600
Net Effect	(\$1,723,200)	(\$693,900)	(\$697,900)	(\$702,200)	(\$706,600)

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

Local Effect: Meaningful operational impact on local health departments that provide direct medical services. Potential meaningful fiscal impact to the extent additional personnel or technology is needed to comply with the bill.

Small Business Effect: Meaningful operational impact on small business health care practices and pharmacies. Potential meaningful fiscal impact to the extent additional personnel or technology is needed to comply with the bill.

Analysis

Bill Summary: A prescriber or dispenser is *not* required to query PDMP if (1) the program is not operational, as determined by the Department of Health and Mental Hygiene (DHMH); (2) the prescriber or dispenser is unable to access PDMP due to a temporary technological or electrical problem; or (3) querying PDMP would prevent a patient from obtaining a prescription in a timely manner and potentially harm the patient's health.

A prescriber may authorize a designee to query PDMP if (1) the designee is employed by or under contract with the same professional practice as the prescriber; (2) the prescriber takes reasonable steps to ensure that the designee is competent in using PDMP; (3) the prescriber remains responsible for ensuring lawful and confidential use of PDMP; and (4) the decision to prescribe (or not prescribe) a monitored prescription drug remains with the prescriber and is reasonably informed by the prescription monitoring data obtained from PDMP.

Current Law: Chapter 166 of 2011 established PDMP in DHMH to assist with the identification and prevention of prescription drug abuse and the identification and investigation of unlawful prescription drug diversion. PDMP must monitor the prescribing and dispensing of Schedule II through V controlled dangerous substances (CDS).

When a dispenser fills a prescription for a monitored drug, the dispenser must electronically submit to PDMP identifying information for the patient, prescriber, dispenser, and drug within three business days of dispensing. Dispensers include pharmacies (including nonresident pharmacies) as well as physicians, podiatrists, and dentists holding a dispensing permit from their respective licensing board. A dispenser who knowingly fails to submit prescription monitoring data to PDMP is subject to a civil penalty of up to \$500 for each failure to submit required information.

Prescribers (physicians, physician assistants, nurse practitioners, dentists, and podiatrists) are not required or obligated to access or use prescription monitoring data. They may register to access their patients' prescription information for treatment purposes. Nonprescribing practitioners (nurses, psychologists, professional counselors/therapists, and social workers) may also register for delegated access under a prescribing practitioner. Pharmacy technicians may also be delegated access by a licensed pharmacist.

A person who knowingly discloses, uses, obtains, or attempts to obtain by fraud or deceit prescription monitoring data is guilty of a misdemeanor and subject to maximum penalties of one year imprisonment and/or a \$10,000 fine. A prescriber or dispenser who knowingly discloses or unlawfully uses prescription monitoring data is subject to disciplinary action by the appropriate licensing board.

Background: DHMH is currently proposing regulations that would require prescribers to register with PDMP. The proposed regulations, *Code of Maryland Regulations* 10.19.03 (published in the *Maryland Register* on January 23, 2015) require that 90 business days after the Secretary of Health and Mental Hygiene determines that PDMP has sufficient technological capacity, applicants for a CDS registration who are authorized to prescribe drugs must register with PDMP as part of CDS registration requirements.

According to the National Alliance for Model State Drug Laws, 22 states (including Delaware, Virginia, and West Virginia) have PDMP laws that mandate prescribers and/or dispensers to access PDMP data in certain circumstances. Usage is typically mandated prior to prescribing a Schedule II or III drug; however, the circumstances vary widely from state to state. The mandates required in neighboring states are described below:

- **Delaware:** Dispensers and prescribers must obtain a PDMP report if they have reasonable belief that a patient may be seeking a controlled substance for any reason other than the treatment of an existing medical condition.
- **Virginia:** The mandate applies only to prescribers at the time of initiating (1) a new course of treatment that includes the prescribing of benzodiazepine or an opiate anticipated to last more than 90 days or (2) a treatment agreement for opioid addiction therapy. The mandate does not apply to pain management relating to dialysis or cancer treatment or to specified benzodiazepines or opiates that have a low potential for abuse (as determined by the Virginia Secretary of Health and Human Resources).
- **West Virginia:** The mandate applies to (1) treating physicians in pain management clinics; (2) program physicians in opioid treatment programs at specified intervals; and (3) prescribers or dispensers (excluding pharmacists) upon initially prescribing or dispensing (and at least annually thereafter) any pain-relieving controlled substance as part of the course of treatment for chronic, nonmalignant pain in patients who are not suffering from terminal illness.

Because mandates are relatively new, their impact has not been formally studied. However, preliminary reports from the Prescription Drug Monitoring Program Center of Excellence at Brandeis University suggest that, in Kentucky, New York, Ohio, and Tennessee, mandates have contributed to a rapid increase in provider enrollment and utilization of PDMPs. New York, Ohio, and Tennessee have also noted subsequent declines in opioid prescribing.

State Expenditures: General fund expenditures for PDMP increase by \$1.7 million in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of increased contractual services to provide the IT infrastructure necessary

to support the mandate and hiring one IT functional analyst II at PDMP to implement and enforce the mandate. It encompasses contractual expenses (including IT personnel, enrollment of new users, and the cost to upgrade PDMP’s hardware and software infrastructure), a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Contractual Expenses	\$1,655,000
Salary and Fringe Benefits	63,507
One-time Start-up Costs	4,285
Ongoing Operating Expenses	<u>439</u>
Total FY 2016 State Expenditures	\$1,723,231

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Contractual expenses are anticipated to decline to approximately \$607,000 annually, which includes ongoing enrollment of users, operational personnel support, and infrastructure maintenance.

Maryland’s PDMP became operational in December 2013 and has since enrolled about 8,500 clinical users, including 5,200 prescribers, 1,250 prescriber delegates, and 2,100 dispensers and dispenser delegates. In total, there are about 31,900 licensed prescribers and 10,400 licensed dispensers in Maryland. Thus, under the bill, PDMP has to enroll about 26,700 additional prescribers, 8,300 additional dispensers, plus an unknown number of prescriber and dispenser delegates. Currently, PDMP receives about 13,150 inquiries each week. Under the bill, PDMP estimates that queries increase to about 338,000 per week, given that an estimated 25,000 monitored prescriptions are dispensed daily.

Requiring prescribers and dispensers to access PDMP prior to prescribing or dispensing a monitored prescription drug *significantly* increases the number of registered PDMP users and the number of inquiries. PDMP estimates its contractor CRISP (Chesapeake Regional Information System for Our Patients) incurs expenses of \$135,000 in fiscal 2016 (included in contractual expenses above) to enroll new users, a process which requires credentialing and verification of identity for each prescriber, dispenser, or delegate. In order to accommodate additional inquiries, CRISP has to acquire additional servers, hire additional IT personnel, and upgrade existing software and hardware.

The bill requires that a prescriber or dispenser who violates the mandate be subject to disciplinary action by the appropriate licensing entity but does not otherwise specify enforcement. In order for the appropriate health occupations boards to take disciplinary action, PDMP must develop, test, and deploy a method for verifying whether PDMP was queried by both the prescriber and dispenser (or a delegate) and transferring any relevant

information about noncompliance to the appropriate health occupations boards. According to PDMP, this requires the additional IT position noted above.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): National Alliance for Model State Drug Laws, Prescription Drug Monitoring Program Center of Excellence at Brandeis University, Department of Health and Mental Hygiene, Department of Legislative Services

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