HOUSE BILL 88

J1, J2 8lr0391

By: **Delegates Barron, Kipke, Angel, Hettleman, Korman, Lierman, Moon, and West**

Introduced and read first time: January 12, 2018
Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

Public Health – Prescription Drug Monitoring Program – Revisions

FOR the purpose of requiring, instead of authorizing, the Prescription Drug Monitoring Program to review prescription monitoring data for indications of a possible misuse or abuse of a monitored prescription drug; requiring, instead of authorizing, the Program to report the possible misuse or abuse to the prescriber or dispenser of the monitored prescription drug under certain circumstances; requiring the Program to provide education to the prescriber or dispenser of the monitored prescription drug under certain circumstances; requiring, instead of authorizing, the Program to review prescription monitoring data for indications of a possible violation of law or a possible breach of professional standards by a prescriber or a dispenser; requiring, instead of authorizing, the Program to notify the prescriber or dispenser of the possible violation of law or possible breach of professional standards and provide education to the prescriber or dispenser; authorizing the Program to notify the appropriate law enforcement agency or health occupations board of a possible violation of law or a possible breach of professional standards by a prescriber or dispenser; requiring the Program, under certain circumstances, to provide the law enforcement agency or health occupations board with the prescription monitoring data necessary for an investigation; altering the circumstances under which the Program is required to obtain certain guidance and interpretation from the technical advisory committee; requiring the Program to take into account certain factors in making a certain determination; prohibiting the obtaining of certain guidance and interpretation from the technical advisory committee from delaying the reporting of a possible violation of law or a possible breach of professional standards to a law enforcement agency or a health occupations board under certain circumstances; making a conforming change; and generally relating to the Prescription Drug Monitoring Program.

BY repealing and reenacting, without amendments,
Article – Health – General

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

Section 21–2A–02(a), 21–2A–04, 21–2A–06(a) and (b), and 21–2A–07(a) and (b)
Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

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

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

Article – Health – General

21–2A–02.

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

21–2A–04.

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

(b) The regulations adopted by the Secretary shall:

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

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

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

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

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

(4) Specify that the Program:

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

(ii) May not impose any fees or other assessments on prescribers or

dispensers to support the operation of the Program;

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

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

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

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

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

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

(9) Require that:

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

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

21–2A–06.

(a) Prescription monitoring data:

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

(2) Are not public records; and

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

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

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

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

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

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

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

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

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

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

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

(i) The Office of the Chief Medical Examiner;

(ii) The Maryland Medical Assistance Program;

(iii) The Office of the Inspector General;

(iv) The Office of Health Care Quality; and

(v) The Office of Controlled Substances Administration;

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

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

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

of the State or local team;

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

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

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

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

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

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

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

2. PROVIDE EDUCATION TO THE PRESCRIBER OR DISPENSER.

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

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

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

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

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

(i) **1.** **[**Notify**]** **SHALL NOTIFY** the prescriber or dispenser of the

possible violation of law or possible breach of professional standards; and

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

(II) 1. MAY NOTIFY THE APPROPRIATE LAW ENFORCEMENT AGENCY OR HEALTH OCCUPATIONS BOARD OF THE POSSIBLE VIOLATION OF LAW OR POSSIBLE BREACH OF PROFESSIONAL STANDARDS; AND

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

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

1. OBTAIN from the technical advisory committee:

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

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

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

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

21–2A–07.

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

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

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

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

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