HB 1271

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1271 (Delegate McKay)
Health and Government Operations

Family Law – Opioid–Exposed Newborns and Parents Addicted to Opioids – Mobile Application (I'm Alive Today App)

This bill requires a local department of social services to assess the risk of harm to and safety of an opioid-exposed newborn or a child whose parent has been found guilty of possession of an opioid. A court must make a referral to the local department for an assessment of the risk of harm to and safety of a child if the child's parent has been found guilty of possession of an opioid.

The Social Services Administration (SSA) in the Department of Human Services must develop a mobile application to be used by parents who are determined to have opioid addictions that could result in harm or potential harm to a child.

Fiscal Summary

State Effect: General expenditures increase, likely significantly, in FY 2019 and potentially significantly annually thereafter. Revenues are not affected.

Local Effect: The circuit courts can handle the bill's referral requirements using existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill expands provisions relating to the assessment of and provision of services for substance-exposed newborns by requiring a local department of social

services, if appropriate, to monitor an opioid-exposed newborn through a mobile application.

The mobile application must (1) provide a method for a parent to check in periodically in order to signal that the parent is conscious and able to care for the parent's children and (2) alert the local department if a parent fails to check in. SSA may contract with a third party to develop the mobile application. The local department must investigate if a parent fails to check in as required by SSA. The Secretary of Human Services may adopt regulations to implement the bill.

Current Law: Statutory provisions set forth a process by which local departments of social services are notified of "substance-exposed" newborns. A newborn is "substance-exposed" if the newborn displays (1) a positive toxicology screen for a controlled drug as evidenced by any appropriate test after birth; (2) the effects of controlled drug use or symptoms of withdrawal resulting from prenatal controlled drug exposure as determined by medical personnel; or (3) the effects of a fetal alcohol spectrum disorder. A newborn is also substance-exposed if the newborn's mother had a positive toxicology screen for a controlled drug at the time of delivery. A newborn is a child younger than the age of 30 days who is born or receives care in the State. A "controlled drug" means a controlled dangerous substance (CDS) included in Schedules I through V as established under Title 5, Subtitle 4 of the Criminal Law Article.

A health care practitioner involved in the delivery or care of a substance-exposed newborn must make an oral report to the local department of social services as soon as possible and make a written report to the local department not later than 48 hours after the contact, examination, attention, treatment, or testing that prompted the report. If the substance-exposed newborn is in the hospital or birthing center, a health care practitioner must instead notify and provide the information to the head of the institution or that person's designee.

A health care practitioner is not required to make a report if the health care practitioner (1) has knowledge that the head of an institution, or the designee of the head, or another individual at that institution has made a report regarding the newborn; (2) has verified that, at the time of delivery, the mother was using a controlled substance as currently prescribed for the mother by a licensed health care practitioner; or (3) has verified that, at the time of delivery, the presence of the controlled substance was consistent with a prescribed medical or drug treatment administered to the mother or the newborn.

To the extent known, an individual must include specified information in the report, including information regarding the nature and extent of the impact of the prenatal alcohol or drug exposure on the mother's ability to provide proper care and attention to the newborn and the risk of harm to the newborn. Within 48 hours after receiving the notification, the

local department must (1) see the newborn in person; (2) consult with a health care practitioner with knowledge of the newborn's condition and the effects of any prenatal alcohol or drug exposure; and (3) attempt to interview the newborn's mother and any other individual responsible for care of the newborn.

Promptly after receiving a report, a local department must assess the risk of harm to and the safety of the newborn to determine whether any further intervention is necessary. If the local department determines that further intervention is necessary, the local department must (1) develop a plan of safe care; (2) assess and refer the family for appropriate services, including alcohol or drug treatment; and (3) as necessary, develop a plan to monitor the safety of the newborn and the family's participation in appropriate services. A report made under these provisions does not create a presumption that a child has been or will be abused or neglected.

Possession of an Opioid

A person may not possess or administer a CDS unless the CDS is obtained directly or by prescription or order from an authorized provider acting in the course of professional practice. A person may also not obtain or attempt to obtain a CDS, or procure or attempt to procure the administration of a CDS, by specified methods, including by fraud, counterfeit prescription, or concealment of fact.

Background: For more information on the State's opioid crisis, please refer to **Appendix – Opioid Crisis**.

State Expenditures: The Department of Human Services did not respond to a request for an estimate of the impact of the bill. However, it is assumed that general fund expenditures increase, likely significantly, for the department to contract with a third party to develop a mobile application that meets the bill's requirements. While it is assumed that a significant portion of any costs incurred for the mobile application is in the first year of implementation (when the application is developed), expenditures likely continue at least minimally beyond fiscal 2019 to allow for upgrades and testing. While it is assumed that local departments may already be involved with many of the families who would come under the bill's purview (based on existing reporting requirements for substance-exposed newborns), the potential for new assessments based on court referrals and the enhanced monitoring of opioid-exposed children through the mobile application may require additional resources. *For illustrative purposes only*, for every new caseworker required, general fund expenditures increase by at least $52,800 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date, and by a minimum of $64,300 annually thereafter.

The Judiciary can handle the bill's notification requirements using existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2018
mm/kdm

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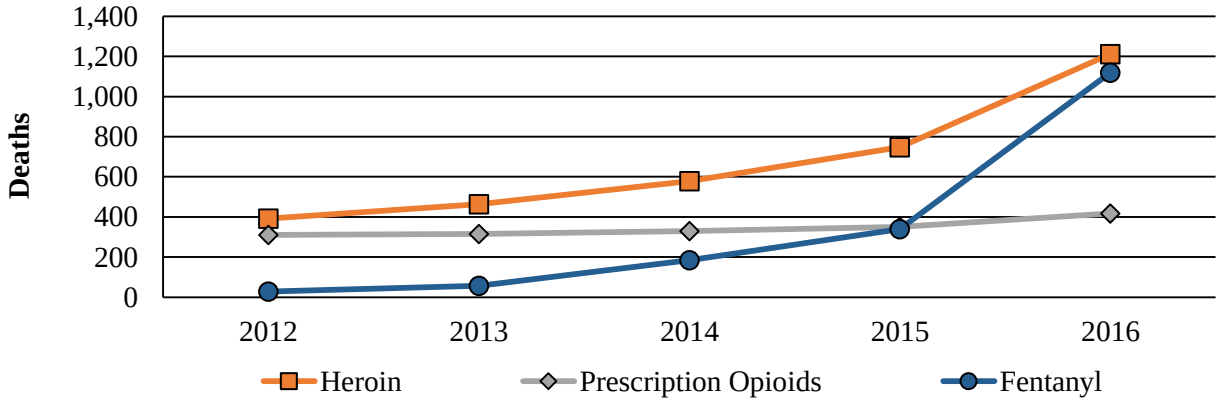
Appendix – Opioid Crisis

Opioid Overdose Deaths

The rate of opioid-related deaths continues to rise at an alarming rate. As seen in **Exhibit 1**, between 2015 and 2016, prescription opioid-related deaths in Maryland increased by 19% (from 351 to 418), heroin-related deaths increased by 62% (from 748 to 1,212), and fentanyl-related deaths increased by 229% (from 340 to 1,119). Between January and June 2017, there were 799 deaths related to fentanyl, a 70% increase over the same time period for 2016, and 46 deaths related to carfentanil, a drug used as an elephant tranquilizer, a substance which first appeared as a cause of death in April 2017.

Exhibit 1
Total Number of Drug-related Intoxication Deaths
By Selected Substances in Maryland
2012-2016



Source: Maryland Department of Health

Federal Actions to Address the Opioid Crisis

In 2016, the Comprehensive Addiction and Recovery Act authorized over $181 million annually, and the 21st Century Cures Act (CURES Act) authorized up to $970 million to be distributed through the State Targeted Response to the Opioid Crisis Grants. The grants are to be used by states to increase access to treatment and reduce unmet treatment needs and opioid-related overdose deaths. In 2017, Maryland received a two-year, $20 million grant for the prevention and treatment of opioid abuse. In March 2017, President Donald J. Trump signed an executive order establishing the President's Commission on Combating Drug Addiction and the Opioid Crisis. The commission issued

a final report in November 2017, with 56 recommendations, including a recommendation for federal block grant funding for state activities relating to opioids and substance use disorders. The full report can be found here: https://www.whitehouse.gov/ondcp/presidents-commission

Maryland Actions to Address the Opioid Crisis

The General Assembly passed several comprehensive acts during the 2017 session to address the State's opioid crisis, which addressed prevention, treatment, overdose response, and prescribing guidelines.

Chapters 571 and 572 of 2017, the Heroin and Opioid Prevention Effort and Treatment Act, among other things, require (1) the Behavioral Health Administration to establish crisis treatment centers that provide individuals in a substance use disorder crisis with access to clinical staff, requiring at least one center be established by June 1, 2018; (2) the Maryland Department of Health (MDH) to establish and operate a toll-free health crisis hotline; (3) certain health care facilities and systems to make available to patients the services of health care providers who are trained and authorized under federal law to prescribe opioid addiction treatment medications, including buprenorphine; (4) each hospital, by January 1, 2018, to have a protocol for discharging a patient who was treated for a drug overdose or identified as having a substance use disorder; (5) the Governor's proposed budget for fiscal 2019 through 2021 to include specified rate adjustments for community behavioral health providers; (6) the Department of Public Safety and Correctional Services and MDH to develop a plan to increase the provision of substance use disorder treatment, including medication assisted treatment, in prisons and jails; (7) the authorization of the provision of naloxone through a standing order and that MDH establish guidelines to co-prescribe naloxone to high-risk individuals; and (8) the expansion of private insurance coverage for opioid use disorders by prohibiting certain carriers from applying a pre-authorization requirement for a prescription drug when used for treatment of an opioid use disorder and that contains methadone, buprenorphine, or naltrexone.

Chapters 573 and 574 of 2017, the Heroin and Opioid Education and Community Action Act (Start Talking Maryland Act), require (1) the State Board of Education to expand an existing program in public schools to encompass drug addiction and prevention education that specifically includes instruction related to heroin and opioid addiction and prevention and information relating to the lethal effect of fentanyl; (2) each local board of education to establish a policy requiring each public school to obtain and store naloxone and other overdose-reversing medication to be used in an emergency situation; (3) each local board of education or local health department to hire a sufficient number of community action officials or develop and implement a program that provides community relations and education functions that coordinate forums and conduct public relations efforts; and (4) specified institutions of higher education in Maryland to establish a policy that

addresses heroin and opioid addiction and prevention, including awareness training for incoming students, obtaining and storing naloxone, and campus police training.

Chapter 570 of 2017 requires a health care provider, on treatment for pain and based on the provider's clinical judgment, to prescribe the lowest effective dose of an opioid and a quantity that is no greater than that needed for the expected duration of pain severe enough to require an opioid that is a controlled dangerous substance (CDS). The Act establishes that the quantity limitations do not apply to opioids prescribed to treat a substance-related disorder; pain associated with a cancer diagnosis; pain experienced while the patient is receiving end-of-life, hospice, or palliative care services; or chronic pain. A violation of the Act is grounds for disciplinary action by the appropriate health occupations board.

In January 2017, Governor Lawrence J. Hogan issued an executive order establishing an Opioid Operational Command Center (OOCC) to facilitate collaboration between State and local public health, human services, education, and public safety entities to combat the heroin and opioid crisis. OOCC will (1) develop operational strategies to continue implementing the recommendations of the Governor's Heroin and Opioid Emergency Task Force; (2) collect, analyze, and facilitate the sharing of data relevant to the epidemic from State and local sources; (3) develop a memorandum of understanding among State and local agencies that provides for the sharing and collection of health and public safety information and data relating to the heroin and opioid epidemic; (4) assist and support local agencies in the creation of opioid intervention teams; and (5) coordinate the training of and provide resources for State and local agencies addressing the threat to the public health, security, and economic well-being of the State.

In March 2017, Maryland became the first state to declare a state of emergency for the opioid crisis, activating the Governor's emergency management authority and enabling increased and more rapid coordination between the State and local jurisdictions. In conjunction with the declaration, Governor Hogan included a supplemental budget appropriation of $10 million, part of a $50 million, five-year commitment to address the State's heroin and opioid epidemic.

In July 2017, $22 million was appropriated for fiscal 2018, including $10 million in CURES Act funding, to be used for prevention, treatment, and enforcement activities. Prevention efforts include distribution of opioid intervention teams for each jurisdiction, a public awareness campaign, funding to train community teams on overdose response and linking to treatment, a pilot program to create school-based teams for early identification of the problems related to substance use disorders, and distribution of opioid information to health care facilities and providers that offer treatment. Enforcement initiatives include funding to disrupt drug trafficking organizations for the heroin coordinator program and to increase MDH's regulatory oversight of CDS. Treatment funding will be used to expand treatment beds and implement a tracking system to identify available beds; improve access to naloxone; establish a 24-hour crisis center in Baltimore City; expand use of peer

recovery support specialists; expand Screening, Brief Intervention, and Referral to Treatment to hospitals and parole, probation, and correctional facilities; increase access to medication-assisted treatment; expand law enforcement diversion programs; and improve the State's crisis hotline.