Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 142 (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. The Social Services Administration (SSA) in the Department of Human Services (DHS) must develop a mobile application to be used by parents who have been assessed to have opioid addictions that could result in harm or potential harm to a child.

Fiscal Summary

State Effect: General and federal fund expenditures increase, potentially significantly, beginning in FY 2020. Revenues are not affected.

Local Effect: None.

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 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 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. A report is also not required if the health care practitioner has verified that, at the time of delivery (1) the mother was using a controlled substance as currently prescribed for the mother by a licensed health care practitioner; (2) the newborn does not display the effects of withdrawal from controlled substance exposure as determined by medical personnel; (3) the newborn does not display the effects of fetal alcohol spectrum disorder; and (4) the newborn is not affected by substance abuse.

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: General and federal funds increase, likely significantly, for DHS to develop and support a mobile application that meets the bill's requirements. Based on preliminary information prepared by DHS, it is assumed that initial development of the mobile application costs a *minimum* of $50,000 in fiscal 2020, and that ongoing support and licensing costs are a *minimum* of $50,000 annually thereafter. Although it is assumed, for purposes of this analysis, that many individuals for whom mobile application monitoring is required may already own cell phones, expenditures increase additionally to the extent that DHS needs to supply clients with cell phones to cover the associated costs and to facilitate client monitoring.

For illustrative purposes only, for every client who requires a phone and an associated cell phone plan, DHS estimates expenditures of $600 annually, in addition to the cost of the phone. 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 investigations based on the enhanced monitoring of opioid-exposed children through the mobile application may require additional resources. Accordingly, for every new caseworker required, general fund expenditures increase by at least $52,800 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date, and by a minimum of $64,300 annually thereafter.

Additional Information

Prior Introductions: HB 1271 of 2018, a similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Montgomery County; Department of Human Services; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2019
an/kdm

Analysis by: Jennifer K. Botts

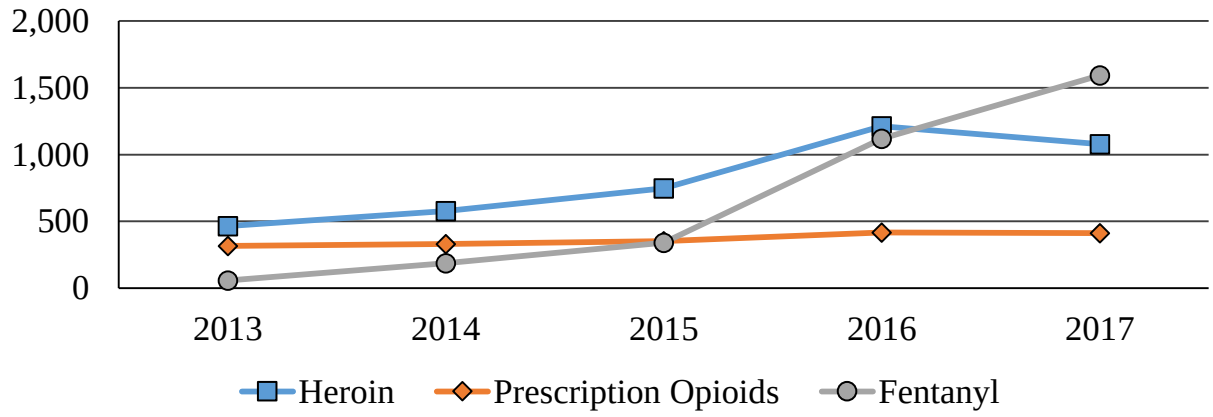
Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Opioid Crisis

Opioid Overdose Deaths

While heroin and prescription opioid deaths have begun to taper off, fentanyl deaths have continued to rise at a high rate. As seen in **Exhibit 1**, between 2016 and 2017, prescription opioid-related deaths in Maryland decreased negligibly by 1% (from 418 to 413) while heroin-related deaths decreased by 11% (from 1,212 to 1,078). However, fentanyl-related deaths increased by 42% (from 1,119 to 1,594). Between January and June 2018, there were 1,038 deaths related to fentanyl, a 30% increase over the same time period for 2017.

Exhibit 1
Total Number of Drug-related Intoxication Deaths
By Selected Substances in Maryland
2013-2017



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.

In 2018, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act was passed. The legislation expands existing programs and creates new programs to prevent substance use disorders and overdoses, including reauthorization of the Office of National Drug Control Policy, new Centers for Disease Control and Prevention grants for states and localities to improve prescription drug monitoring programs, and funding to encourage research into nonaddictive painkillers. Additionally, the legislation partially lifts the restriction that blocks states from spending federal Medicaid dollars on residential addiction treatment centers by allowing payments for residential services for up to 30 days while also allowing Medicare to cover medication-assisted treatment (MAT) in certain settings for the treatment of substance use disorder.

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; (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 to have a protocol for discharging a patient who was treated for an 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 MAT, in prisons and jails; (7) authorization of the provision of naloxone through a standing order and 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 requiring preauthorization for a prescription drug used for treatment of an opioid use disorder 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 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 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.

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 data sharing relevant to the heroin and opioid epidemic; (3) develop a memorandum of understanding among State and local agencies regarding sharing and collection of health and public safety information and data relating to the 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.

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 MAT; expand law enforcement diversion programs; and improve the State's crisis hotline.

In 2018, the General Assembly expanded upon the comprehensive legislation of the prior year. Chapter 149 of 2018 authorizes an emergency medical services provider or law enforcement officer to report an actual or suspected overdose to an appropriate information technology platform. Chapter 211 of 2018 requires MDH to identify a method for establishing a tip line for a person to report a licensed prescriber who the person suspects is overprescribing certain medications. Chapters 215 and 216 of 2018 require a health care provider to advise a patient of the benefits and risks associated with a prescribed opioid or co-prescribed benzodiazepine. Chapters 439 and 440 of 2018 require a general hospice care program to establish a written policy for the collection and disposal of unused prescription medication and require a program employee to collect and dispose of a patient's unused medication on the death of the patient or the termination of a prescription.