Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 466 (Delegate Kerr, *et al.*)
Health and Government Operations Finance

Prescription Drug Monitoring Program - Program Evaluation

This bill removes the Prescription Drug Monitoring Program (PDMP) from evaluation under the Maryland Program Evaluation Act and repeals the program's termination date. The bill also (1) repeals the requirement for licensing entities to meet specified quorum voting requirements for the issuance of an administrative subpoena; (2) requires PDMP to provide prescription monitoring data to additional specified entities under certain circumstances; and (3) requires the Advisory Board on Prescription Drug Monitoring to include additional information in its annual reports. The bill generally implements recommendations of the Department of Legislative Services' (DLS) December 2018 full sunset evaluation of PDMP. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: PDMP expenditures are maintained beyond FY 2019. The Governor's proposed FY 2020 budget includes more than $1.3 million for PDMP (all funds). PDMP can implement the bill with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: PDMP must provide prescription monitoring data to (1) *authorized users* (rather than the *authorized administrator*) of another state's prescription drug monitoring program or any other authorized local, state, territorial, or federal agency in connection with the provision of medical care; (2) the Office of the Attorney General on the issuance

of a subpoena for the purpose of furthering a *bona fide* existing investigation; and (3) a medical director of a health care facility, or their designee, for the purpose of providing health care practitioners employed, contractually or otherwise, at the facility access to the prescription monitoring data in connection with the provision of medical care or the dispensing of a monitored prescription drug to a patient of the facility.

The bill also requires PDMP to provide prescription monitoring data to the Office of the Chief Medical Examiner in accordance with State law regarding the types of deaths that a medical examiner must investigate, rather than for the purpose of furthering an existing *bona fide* individual investigation.

The additional information required to be provided in the advisory board's annual report for 2019 includes an update on the Technical Advisory Committee (TAC), specifically (1) written protocols for meetings and the procedures for reviewing unsolicited reports and investigative data requests; (2) a summary of meetings since the implementation of Chapter 147 of 2017; and (3) recommendations on any changes necessary for TAC to meet the needs of PDMP. In its annual report for 2020, the advisory board must include a report on the nonstatutory recommendations from the DLS December 2018 full sunset evaluation of PDMP that are not enacted by the bill.

Current Law: Chapter 166 of 2011 established PDMP in the Maryland Department of Health (then the Department of Health and Mental Hygiene), and Chapter 92 of 2014 extended PDMP to its current termination date of July 1, 2019. The primary purpose of the program is to monitor the prescribing and dispensing of Schedule II through V controlled dangerous substances (CDS) in order to address issues of prescription drug abuse and drug diversion (the transfer of legally prescribed medication to an illicit use).

Prescribers and pharmacists must register with PDMP, and prescribers must query the PDMP system before prescribing an opioid or a benzodiazepine, with certain exceptions. Accordingly, prescribers and pharmacists are subject to disciplinary action by the appropriate licensing entity for failure to comply with the mandatory registration and use requirements.

Chapter 147 of 2016 authorized the use of unsolicited reports to prescribers and dispensers on their own behavior. Furthermore, the role of TAC was altered to require its review of the unsolicited reports before they can be sent, and its membership was expanded from five to nine members.

Prescription monitoring data is not a public record and may not be disclosed to any person except as specifically authorized under law. However, the program must disclose data, in accordance with regulations adopted by the Secretary of Health, to:

- a prescriber, or a licensed health care practitioner authorized by the prescriber, in connection with the medical care of a patient;
- a dispenser, or a licensed health care practitioner authorized by the dispenser, in connection with the dispensing of a monitored prescription drug;
- a federal, State, or local law enforcement agency, on issuance of a subpoena, for an existing *bona fide* individual investigation;
- a licensing entity, on issuance of an administrative subpoena *voted on by a quorum of the board* of the licensing entity, for purposes of a *bona fide* individual investigation (or in the case of the State Board of Physicians (MBP), voted on by a quorum of a disciplinary panel);
- a rehabilitation program under a health occupations board on issuance of an administrative subpoena;
- a patient with respect to prescription monitoring data about the patient;
- the *authorized administrator* of another state's prescription drug monitoring program;
- specific units of MDH on approval of the Secretary of Health for the purpose of furthering an existing *bona fide* individual investigation;
- the Technical Advisory Committee;
- the State Child Fatality Review Team or a local child fatality review team, on request from the chair of the State or local team;
- a local drug overdose fatality review team, on request from the chair of the local team;
- the Maternal Mortality Review Program, on request from the program; or
- a medical review committee, on request from the committee.

Under the Health – General Article a medical examiner must investigate the death of a human being if the death occurs (1) by violence; (2) by suicide; (3) by casualty; (4) suddenly, if the deceased was in apparent good health or unattended by a physician; or (5) in any suspicious or unusual manner. The medical examiner must also investigate the death of a fetus under specified circumstances.

Background:

Prescription Drug Monitoring Programs in General

Prescription drug monitoring programs use electronic databases to gather information from providers prescribing and pharmacies dispensing prescriptions for CDS. Prescription data is made available on request from end users and sometimes distributed to end users via unsolicited reports (data or reports sent proactively that may identify concerning behavior). The data usually includes information relating to the patient, prescriber, pharmacy,

medicine, dosage, and the date dispensed. End users of prescription drug monitoring program data are predominately prescribers and pharmacists but may also include health occupations licensing boards, law enforcement and drug control agencies, medical examiners, drug courts and criminal diversion programs, addiction treatment programs, public and private third-party payers, and other public health and safety agencies.

Available research on programs nationally indicates a positive impact on health care and law enforcement outcomes, particularly in reducing multiple provider episodes (often referred to as "doctor shopping") and the time it takes law enforcement to complete drug diversion investigations.

Maryland Program Evaluation Act

PDMP is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article). The Act establishes a process better known as "sunset review" as most entities evaluated are also subject to termination, including PDMP, which is scheduled to terminate July 1, 2019. The sunset review process traditionally begins with a preliminary evaluation conducted by DLS on behalf of the Legislative Policy Committee (LPC), although a few entities are subject to direct full evaluation. LPC decides whether to waive an entity from further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise, a full evaluation is undertaken the following year.

Sunset Evaluation of the Prescription Drug Monitoring Program

In 2018, DLS conducted a full evaluation of PDMP, *Sunset Review: Evaluation of the Prescription Drug Monitoring Program*. DLS found that PDMP is successfully fulfilling its statutory duties and mission since becoming operational in 2014.

The DLS report noted that no comparable Maryland program is subject to the Maryland Program Evaluation Act. Further, a review of the legislative history of PDMP indicated that PDMP was subject to sunset evaluation over concerns that PDMP may have a negative impact on patient safety. The report found that, after four years of operation, such negative impacts have not been realized. A review of programs in other states found that only 7 of 49 states are subject to termination or audit. Thus, the report recommended that PDMP be removed from evaluation under the Maryland Program Evaluation Act and that the program's termination date be repealed.

During the sunset evaluation, some health occupations boards expressed concerns about the process for requesting data from PDMP. MBP and the State Board of Nursing raised concerns about the requirement for an administrative subpoena voted on by a quorum of the board or an MBP disciplinary panel. Both boards indicated that the requirement for a

vote of approval by the full board or a disciplinary panel is an additional unnecessary step and, thus, the boards subpoena pharmacies directly. The DLS report concluded that, if the additional requirement for board approval of the subpoena is removed, the receipt of information can be accelerated and should include all of the prescriptions from the prescriber. Accordingly, the report recommended that this requirement be repealed.

The DLS report noted that interstate sharing of prescription drug monitoring data helps to ensure that prescribers have a complete picture of their patients' prescription history. While Maryland law does not hinder PDMP from receiving information from other states' programs, it does limit *authorized users* of programs in other states from using data from Maryland's PDMP in certain electronic health record integrations. Therefore, the report recommended that statute be amended to allow authorized users of other states' prescription drug monitoring programs to access Maryland's prescription monitoring data.

During interviews with TAC members, DLS found that TAC was not yet fully operational as its role continues to evolve. DLS recommended that PDMP establish written protocols for TAC, including meeting requirements with at least one in-person meeting each year, and institute the procedures for reviewing unsolicited reports and investigative data requests. DLS further recommended that PDMP include specified information about TAC in its annual reports.

Additional Information

Prior Introductions: None.

Cross File: SB 342 (Chair, Finance Committee) - Finance.

Information Source(s): Maryland Department of Health; U.S. Substance Abuse and Mental Health Services Administration; Department of Legislative Services

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Analysis by: Amber R. Gundlach

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