Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1518 (Delegate McKay)
Health and Government Operations

Opioid-Exposed Newborns and Parents Addicted to Opioids - Mobile Application - Pilot Program (I'm Alive Today App)

This bill requires the Social Services Administration (SSA) in the Department of Human Services (DHS), in consultation with the local departments of social services, to implement a pilot program in Allegany, Garrett, and Washington counties to communicate with opioid-addicted parents of opioid-exposed newborns and children through a mobile application. SSA must develop a mobile application to be used by parents of opioid-addicted newborns or who are determined by SSA to have opioid addictions that could result in harm or potential harm to a child. The local department of social services must assess the risk of harm to and safety of an opioid-exposed newborn. By December 31, 2021, and December 31, 2022, SSA must report to the General Assembly on the effectiveness of the pilot program in monitoring opioid-exposed newborns through a mobile application. **The bill terminates on December 31, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, beginning in FY 2021. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The mobile application must provide a method for a parent to communicate periodically in order to signal that the parent is conscious and able to care

for the parent's children. SSA may contract with a third party to develop the mobile application. SSA is exempt from specified provisions of State procurement law for the development and implementation of the mobile application. SSA must develop an evaluation process for the mobile application pilot program to determine the effectiveness of the program.

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 fund expenditures increase in fiscal 2021, likely significantly, for DHS to develop and support a mobile application that meets the bill's requirements. Based on information prepared by DHS, it is assumed that initial development of the mobile application costs a minimum of $230,000 in fiscal 2021, ongoing support and licensing costs are a minimum of $65,000 annually thereafter, and evaluation of the pilot program costs a minimum of $194,000. 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.

Additional Information

Prior Introductions: HB 142 of 2019, a similar bill, received a hearing in the House Health and Government Operations Committee but was withdrawn. HB 1271 of 2018, another similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Allegany and Garrett counties; Department of Human Services; Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2020
af/jc

Analysis by: Amberly Holcomb

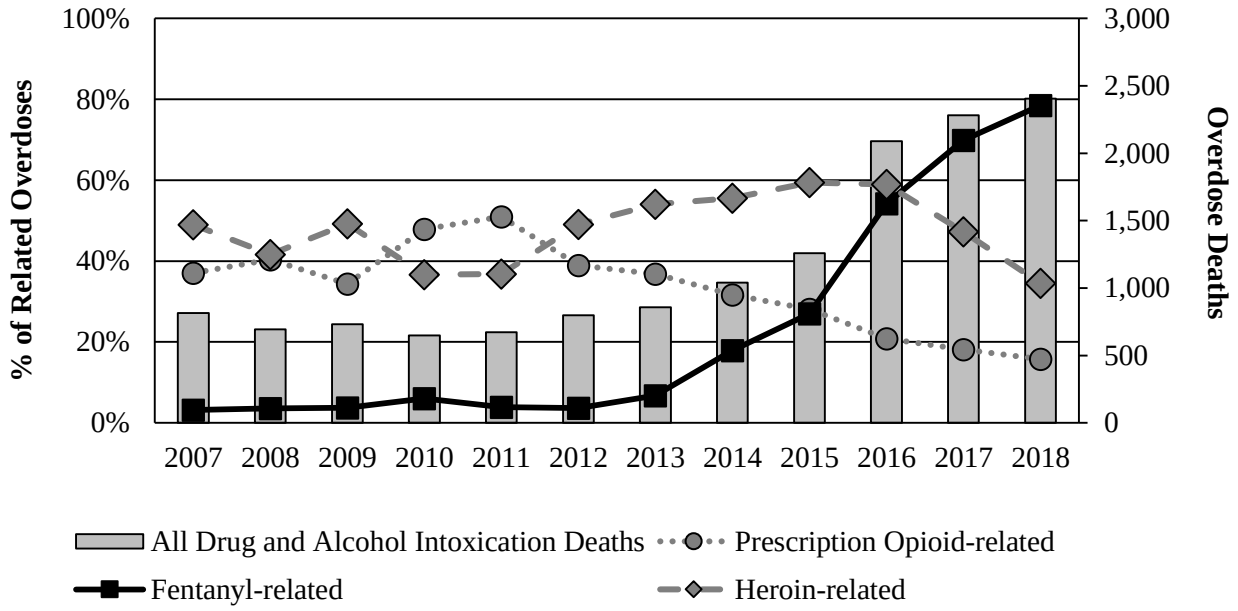
Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Opioid Crisis

Opioid Overdose Deaths

Maryland ranks among the top five states for the highest rates of opioid-related overdose deaths. In 2018, the State experienced the deadliest year on record for overdose deaths, due almost exclusively to the continued presence of fentanyl. **Exhibit 1** shows the total overdose deaths in the State since 2007 and the prevalence of prescription opioids, fentanyl, and heroin in contributing to overdose deaths.

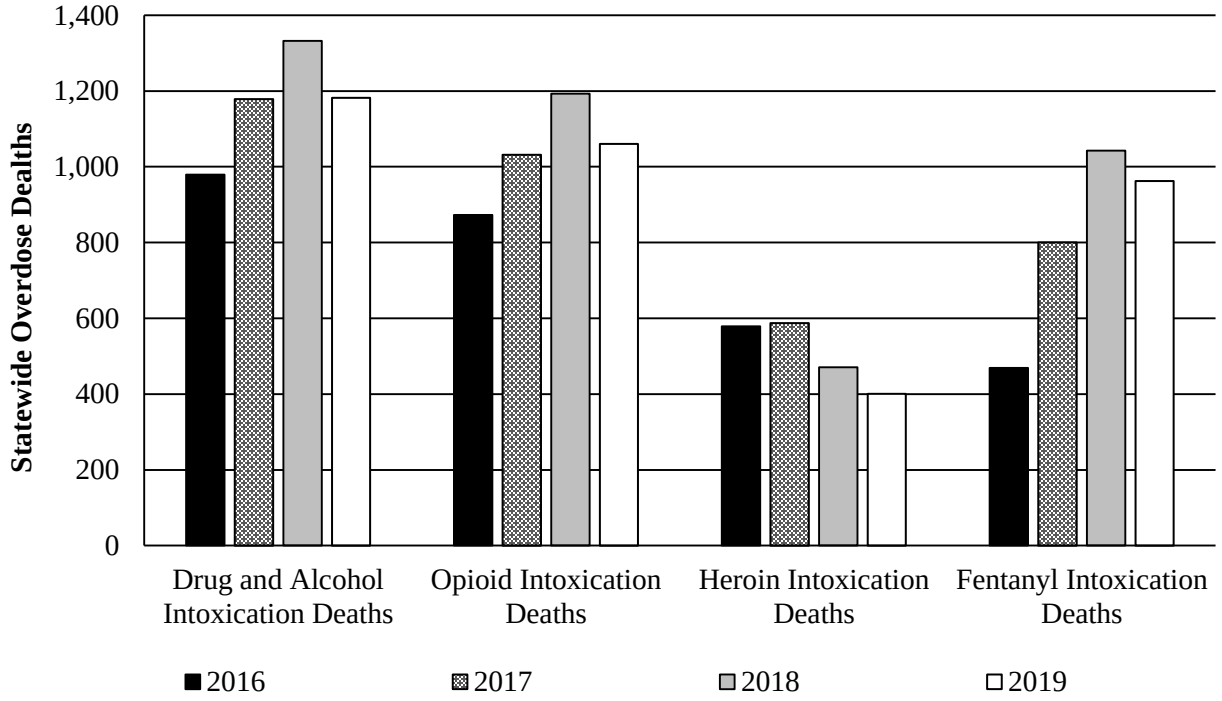
Exhibit 1
Overdose Deaths and Substance Prevalence
Calendar 2007-2018



Source: Maryland Department of Health

Preliminary data for 2019 suggests that 2018 may have been the peak of the opioid epidemic. Data published by the Opioid Operational Command Center indicates that the total number of overdose deaths in Maryland for the first six months of 2019 was lower than the number of deaths at the same point in 2018. **Exhibit 2** shows the total overdose deaths, overdoses involving opioids, and deaths involving heroin and fentanyl for the first six months of the last four years.

Exhibit 2
Overdose Deaths, First Six Months
Calendar 2016-2019



Source: Maryland Department of Health

Although the data for the first six months of 2019 shows a decrease in fentanyl-related overdose deaths relative to 2018, fentanyl-related deaths are still well above 2017 levels. Furthermore, overdose deaths for heroin and fentanyl are not mutually exclusive, as law enforcement often finds fentanyl mixed into heroin. Nearly 30% of all overdose deaths in the State in 2018 involved both heroin and fentanyl.

Maryland Actions to Address the Opioid Crisis

Legislative Response

The General Assembly has passed numerous acts to address the State's opioid crisis, including prevention, treatment, overdose response, and prescribing guidelines.

- Chapters 571 and 572 of 2017, the Heroin and Opioid Prevention Effort and Treatment Act, require the Governor's proposed budget for fiscal 2019 through 2021 to include specified rate adjustments for community behavioral health providers; require development of a plan to increase provision of treatment; expand access to naloxone; require the Maryland Department of Health (MDH) to distribute evidence-based information about opioid use disorders to health care facilities and providers that provide treatment; and prohibit health insurance carriers from applying a prior authorization requirement for certain substance use disorder treatment drugs.

- Chapters 573 and 574 of 2017, the Heroin and Opioid Education and Community Action Act (Start Talking Maryland Act), expand drug education in public schools to include heroin and opioid addiction prevention; require local boards of education to establish a policy requiring each public school to store naloxone and other overdose-reversing medication to be used in an emergency; and require institutions of higher education that receive State funding to establish a policy that addresses heroin and opioid addiction and prevention.

- Chapter 570 of 2017 requires a health care provider 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, with specified exceptions.

- 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 whom 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.

- Chapter 532 of 2019 established programs for opioid use disorder screening, evaluation, and treatment (specifically medication-assisted treatment) in local correctional facilities and in the Baltimore Pretrial Complex. The programs must conduct a screening of the mental health and substance use status of each inmate as well as offer at least one formulation of each U.S. Food and Drug Administration approved full opioid agonist, partial opioid agonist, and long-acting opioid antagonist used for the treatment of opioid use disorders. Phase-in of the programs begins January 1, 2020.

- Chapter 537 of 2019 established the Opioid Restitution Fund, a special fund that will retain any revenues received by the State relating to specified opioid judgments or settlements. The fund may be used only for specified opioid-related programs and services.

Legal Actions Related to the Opioid Crisis

Nationwide, lawsuits have been filed against pharmaceutical manufacturers, pharmacies, and individual providers for fueling the opioid crisis, either for aggressively marketing opioids and downplaying the known addictive qualities of the drugs, or for failing to detect and report suspicious orders. In December 2017, the U.S. Judicial Panel on Multidistrict Litigation ordered the consolidation of the nearly 200 pending opioid-related cases into multidistrict litigation in the U.S. District Court for the Northern District of Ohio. Over 2,500 jurisdictions are part of the litigation, including 32 Maryland jurisdictions (16 counties and 16 cities). In September 2019, Purdue Pharma, one of the original defendants named in the lawsuit, filed for bankruptcy. Purdue Pharma has proposed a settlement worth $3 billion plus future revenues from OxyContin sales. Attorney General Brian E. Frosh issued a statement rejecting Purdue Pharma's proposed settlement. In May 2019, the Attorney General filed charges against Purdue Pharma, the Sackler family (owners of Purdue Pharma), Rhodes Pharmaceuticals (an entity with ties to Purdue Pharma and the Sackler family), and related entities. The State's charges allege that Purdue Pharma and the Sackler family conducted an orchestrated marketing scheme designed to mislead Maryland health care providers, patients, insurers, officials, and others about the benefits of opioids while downplaying their risks. Any payments made to the State as a result of opioid litigation will be placed in the Opioid Restitution Fund.

Funding to Address the Opioid Crisis

The fiscal 2020 budget has nearly $710 million targeted toward addressing the opioid crisis in Maryland. Nearly $700 million is budgeted in MDH, the vast majority of which is for substance use disorder treatment in Medicaid ($622.5 million). Also included in MDH's fiscal 2020 budget is the second and final year of $33 million in federal funds for the State Opioid Response Grant. The budget also contains $3 million for the Behavioral Health

Crisis Response Grant Program as mandated by the General Assembly, which will increase to $4 million in fiscal 2021. Additional fiscal 2020 funding includes $3 million in Department of Public Safety and Correctional Services support for medication-assisted treatment in State correctional facilities and $725,000 between the Governor's Office of Crime Prevention, Youth, and Victim Services and the Department of State Police for various enforcement and treatment efforts.