

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 865 (Senator Ready)
Education, Health, and Environmental Affairs

Controlled Dangerous Substances and Treatment of Chronic Pain and Long-Term Oxygen Use Patients (Continuity of Care Act of 2022)

This bill establishes (1) additional requirements for pharmacists (or delegates) who have a reasonable belief that a patient may be seeking a monitored prescription drug for a purpose other than treatment; (2) requirements for continuing a regimen of a controlled dangerous substance (CDS) for specified patients; and (3) requirements for providers treating patients who experience chronic pain or receive long-term oxygen therapy. The bill also alters requirement for prescribing opioids and requires the Maryland Department of Health (MDH) to use the current version of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* when identifying up-to-date, evidence-based, written information about opioid use disorder. By January 1, 2023, MDH must adopt regulations to implement the bill, as specified.

Fiscal Summary

State Effect: MDH can implement the bill's requirements within existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Pharmacists and Pharmacist Delegates – Monitored Prescription Drugs

The bill adds requirements for a pharmacist (or pharmacist delegate) who has a reasonable belief that a patient may be seeking a monitored prescription drug for any purpose other than the treatment of an existing medical condition. After review of prescription drug monitoring program (PDMP) data, if the pharmacist (or delegate) has a reasonable belief that a patient may be seeking a monitored prescription drug for misuse, abuse, or diversion, the pharmacist (or delegate) must contact the prescriber to verify and communicate any possible concerns. If the prescriber confirms the prescription is for the purpose of the treatment of an existing medical condition, the pharmacist (or delegate) must fill the prescription as written.

A pharmacist or licensed pharmacy may not be held liable in a civil or criminal action solely for dispensing an opioid if the pharmacist or licensed pharmacy complied with specified requirements.

Prescribing Opioids

A prescriber must base the dosage, quantity, and duration of an opioid prescribed for the treatment of pain on the prescriber's clinical judgment after consideration of an evidence-based clinical guideline that is appropriate, as specified under current law.

The bill specifies that a violation of specified opioid prescribing requirements is grounds for *possible* disciplinary action *at the discretion of* the health occupations board that regulates the health care provider who commits the alleged violation.

Continuity of Care – Regimen of a Controlled Dangerous Substance

A health care provider must make a good-faith effort to maintain a previously prescribed dosage of and regimen for a CDS and make any timely referrals necessary to ensure a patient's continued care for a patient who (1) loses access to the patient's health care provider who manages the patient's CDS and (2) seeks a continuance of a prescription. Referrals may be for mental health medication management, for pain medication management, or to a new health care provider. A health care provider may access information relating to any previous dosages and regimens for CDS through PDMP if (1) electronic or physical records, including documentation of previous dosages, are unavailable and (2) a regimen for CDS is necessary.

A health care provider who makes a good-faith effort to comply with the requirements for continuing a patient on the previous dosage or regimen for a CDS for 90 days after the first patient visit is not liable in a civil or criminal action.

Opioids – Chronic Pain and Long-term Oxygen Therapy

“Chronic pain” means a condition in which a patient’s pain persists beyond the usual course of an acute disease or health of an injury or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years. Chronic pain does not include treatment for pain from terminal illness. A diagnosis of chronic pain made by a prescriber and supported by written documentation of the diagnosis of the treating prescriber is proof that a patient suffers from chronic pain.

In general, a person who experiences chronic pain or receives long-term oxygen therapy may be administered ongoing treatment by (1) a health care practitioner who specializes in the treatment of chronic pain or long-term oxygen therapy; (2) a licensed health care practitioner who specializes in the illness or injury from which the patient suffers; or (3) the patient’s primary care provider (PCP), subject to the requirement that the PCP document whether a specialist for the treatment of the patient’s specific illness or injury or a pain management practitioner was consulted.

A prescriber who provides treatment to a patient who experiences chronic pain or receives long-term oxygen therapy:

- must make all decisions regarding treatment, including the decision of whether the treatment requires the prescription of opioids;
- must administer care sufficient to treat a patient based on ongoing, objective evaluation of a patient without fear of reprimand or discipline;
- may not make a determination based on specific morphine milligram equivalent guidelines when ordering, prescribing, dispensing, administering, or purchasing CDS, including opioids;
- must document the patient’s medical condition and treatment;
- if opioids are administered, must administer the opioids in the lowest amount necessary to control the patient’s chronic pain;
- if opioids are prescribed, must prescribe the opioids in a measured and monitored manner, closely monitor the patient’s prescription, and titrate the patient’s prescription to the lowest effective dose, as specified; and
- must continue treatment for specified patients.

A prescriber who provides treatment to chronic pain and long-term oxygen therapy patients may not be held liable in a civil or criminal action if the prescriber makes a good-faith effort to comply with specified requirements.

Regulations

MDH must adopt regulations to implement the bill, including regulations that (1) take into consider the individualized needs of patients who receive treatment in accordance with the bill; (2) require prescribers who act in good faith to use their best judgment, notwithstanding any statute or rule to the contrary, to manage a patient's chronic pain; (3) ensure that patients receiving treatment in accordance with the bill are treated with dignity and not unduly denied the medications needed to treat the patient's chronic pain; and (4) ensure that prescribers may co-prescribe benzodiazepine as medically appropriate in addition to treatment in accordance with the bill.

Current Law: Chapter 166 of 2011 established PDMP to assist with the identification and prevention of prescription drug abuse and the identification and investigation of unlawful prescription drug diversion. PDMP must monitor the prescribing and dispensing of Schedule II through V CDS. As of July 1, 2017, all CDS dispensers are required to register with PDMP. As of July 1, 2018, prescribers are required to (1) request at least the prior four months of prescription monitoring data for a patient before initiating a course of treatment that includes prescribing or dispensing an opioid or a benzodiazepine; (2) request prescription monitoring data for the patient at least every 90 days until the course of treatment has ended; and (3) assess prescription monitoring data before deciding whether to prescribe or dispense – or continue prescribing or dispensing – an opioid or a benzodiazepine. A prescriber is not required to request prescription monitoring data if the opioid or benzodiazepine is prescribed or dispensed to specified individuals and in other specified circumstances.

Prescribers include the following practitioners with CDS prescriptive authority: physicians, physician assistants, dentists, podiatrists, nurse practitioners, and advanced practice nurse midwives. Failure to comply with the requirements of PDMP is grounds for disciplinary action from the appropriate health occupations board for dentists, physicians, and physician assistants.

Under PDMP, if a pharmacist (or delegate) has a reasonable belief that a patient may be seeking a monitored prescription drug for any purpose other than the treatment of an existing medical condition, the pharmacist (or delegate) has a duty to request PDMP data to determine if the patient has received other prescriptions that indicate misuse, abuse, or diversion of a monitored prescription drug before dispensing a monitored prescription drug to the patient. The pharmacist also has the responsibility described under specified federal

law (on purpose of issue of prescription). Failure to comply with the requirements of PDMP is not a disciplinary ground for pharmacists regulated by the State Board of Pharmacy.

Under the Code of Maryland Regulations 10.32.02.17, the Maryland Board of Physicians (MBP) may consider the *Guideline for Prescribing Opioids for Chronic Pain* published by the Centers for Disease Control and Prevention, but this guideline is not binding on MBP or the disciplinary panel.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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