

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 570 (Delegate Bagnall)
Health and Government Operations

Public Health – Prescription Opioids – Deactivation Systems

This bill prohibits an opioid prescription from being dispensed in the State unless the dispenser provides a “personal use pharmaceutical disposal system” to the “ultimate user” at no cost. A “personal use pharmaceutical disposal system” means a portable product designed for use by an “ultimate user” to deactivate a prescribed opioid to a nonretrievable condition or state. An “ultimate user” is any individual who has lawfully obtained and possesses a prescribed opioid for personal use or use by a member of the individual’s household. The Maryland Department of Health (MDH) may procure personal use pharmaceutical disposal systems – through donations from manufacturers or using funds from the Opioid Restitution Fund (ORF) – and may provide such systems to pharmacies throughout the State. MDH may develop procedures to aid in the bill’s implementation.

Fiscal Summary

State Effect: To the extent that MDH purchases disposal systems and provides them to pharmacies, ORF special fund expenditures increase by an indeterminate amount beginning in FY 2024. Alternatively, if MDH does not provide disposal systems, Medicaid expenditures (50% federal funds, 50% general funds) likely increase by an indeterminate amount beginning in FY 2024; federal fund revenues increase accordingly.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Prescription Drug Repository Program

Chapter 287 of 2006 established a prescription drug repository program regulated by the State Board of Pharmacy. Chapters 546 and 547 of 2011 expanded the scope of the program to allow the acceptance of prescription drugs and medical supplies returned to a pharmacy for proper disposal. Each pharmacy for which a pharmacy permit has been issued must dispose of returned prescription drugs or medical supplies in accordance with program policies. However, this program is voluntary, and the number of participating pharmacies statewide is limited.

Prescription Drug Monitoring Program

Chapter 166 of 2011 established the Prescription Drug Monitoring Program (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 controlled dangerous substances (CDS). As of July 1, 2017, all CDS dispensers are required to register with PDMP.

Opioid Restitution Fund

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

In July 2021, a \$26 billion global settlement was announced by opioid manufacturer Johnson & Johnson (Janssen Settlement Agreement) and McKesson, Amerisource Bergen, and Cardinal Health (Final Distributor Agreement). In September 2021, then Maryland Attorney General Brian E. Frosh announced Maryland's participation in the global settlement, under which the State and its participating subdivisions are expected to receive approximately \$395 million over 18 years. On November 7, 2022, Attorney General Frosh announced that, by the end of calendar 2022, approximately \$47 million would be distributed to ORF and an estimated \$13.5 million in direct payments would be delivered to subdivision abatement funds. A copy of the Janssen Settlement can be located [here](#). A copy of the Final Distributor Settlement Agreement can be located [here](#).

State Fiscal Effect: The bill authorizes but does not require MDH to procure personal use pharmaceutical disposal systems and provide them to pharmacies statewide. If MDH elects

to provide the disposal systems (and does not receive donations from manufacturers), ORF special fund expenditures increase by an indeterminate amount beginning in fiscal 2024 for the purchase of such systems. If MDH elects not to provide the disposal systems, the cost is instead incurred by pharmacies. Assuming that this cost is passed on to purchasers, Medicaid expenditures (50% federal funds, 50% general funds) increase by an indeterminate amount beginning in fiscal 2024. Federal fund revenues increase accordingly.

According to the 2021 PDMP annual report, approximately 2.5 million opioid prescriptions were filled in the State in fiscal 2021, a 4.2% reduction from the number filled in fiscal 2020 and a nearly 40% reduction from the number filled in fiscal 2017. Currently, there are several drug disposal products on the market, but their price points vary considerably. One such product, DisposeRx, is offered free of charge at Walmart and Sam's Club stores nationwide to customers who are filling opioid prescriptions. A 30-pack of DisposeRx packets retails for approximately \$1.30 per packet. Another leading drug disposal product, the Deterra pouch, sells at a price of \$7 to \$10 per pouch.

For illustrative purposes only, if MDH purchased 2.25 million disposal systems (assuming that the number of opioid prescriptions dispensed has continued to decline since fiscal 2021) at a cost \$1.00 per unit, the total cost to provide disposal systems for all opioid prescriptions filled in the State would be \$2.25 million annually.

Small Business Effect: Any small business that manufactures or sells personal use pharmaceutical disposal systems benefits from a broader market under the bill. Small business pharmacies incur additional costs to stock and dispense such products (unless MDH voluntarily provides the products).

Additional Comments: Federal agencies, including the U.S. Drug Enforcement Administration (DEA) and the U.S. Food and Drug Administration (FDA), have declined, at least thus far, to endorse personal use pharmaceutical disposal systems as a solution for disposing of unused prescription opioids. FDA is currently seeking public comment on a proposal, announced on April 20, 2022, that would require opioids used in outpatient settings to be dispensed with prepaid mail-back envelopes. Current guidance from the DEA and FDA states that the best option for disposing of unused prescription opioids is for individuals to bring them to DEA-registered collection sites or DEA take-back events.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 6, 2023
km/jc

Analysis by: Ralph W. Kettell

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