

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 831 Controlled Substance Prescription

**SPONSOR(S):** Health & Human Services Committee; Health Quality Subcommittee; Fasano

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 1 N, As CS	Poche	O'Callaghan
2) Health & Human Services Committee	16 Y, 2 N, As CS	Poche	Calamas

### SUMMARY ANALYSIS

The Committee Substitute for House Bill 831 reduces the time period within which a dispensing of a controlled substance must be reported to the prescription drug monitoring program (PDMP) database, from seven days to two days. The bill also removes the prohibition against funds from prescription drug manufacturers being used to implement the PDMP.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### *Prescription Drug Monitoring Program*

Chapter 2009-197, L.O.F, established the Prescription Drug Monitoring Program (PDMP) in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.<sup>1</sup> Dispensers of controlled substances listed in Schedule II, III, or IV must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.<sup>2</sup> Dispensers must report the dispensing of a specified controlled substance to the PDMP database within seven days of dispensing the controlled substance.<sup>3</sup>

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.<sup>4</sup> Indirect access to the PDMP database is provided to:

- DOH or its relevant health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- A law enforcement agency; and
- A patient or the legal guardian, or designated health care surrogate of an incapacitated patient.<sup>5</sup>

Entities with indirect access to the PDMP database may request information from the PDMP manager that is confidential and exempt under s. 893.0551, F.S, which is discussed below. A law enforcement agency, for example, may request such information during an active investigation regarding potential criminal activity, fraud, or theft relating to prescribed controlled substances.<sup>6</sup>

Restrictions on how DOH may fund implementation and operation of the PDMP are also included in statute. DOH is prohibited from using state funds and any money received directly or indirectly from prescription drug manufacturers to implement the PDMP.<sup>7</sup> Funding for the PDMP comes from three funding sources:<sup>8</sup>

1. Donations procured by the Florida PDMP Foundation, Inc. (Foundation), the direct-support organization authorized by s. 893.055, F.S., to fund the continuing operation of the PDMP. The following amounts have been paid to DOH by the Foundation since the PDMP was established:

FY 2009-2010	\$39,108
FY 2010-2011	\$201,552

<sup>1</sup> S. 893.055(2)(a), F.S.

<sup>2</sup> S. 893.055(3)(a)-(c), F.S.; controlled substances listed in Schedule II, III, or IV can be found in s. 893.03(2)-(4), F.S.

<sup>3</sup> S. 893.055(4), F.S.

<sup>4</sup> S. 893.055(7)(b), F.S.

<sup>5</sup> S. 893.055(7)(c)1.-4., F.S.

<sup>6</sup> S. 893.055(7)(c)3., F.S.; see also 64K-1.003(2)(c), F.A.C.

<sup>7</sup> S. 893.055(10) and (11)(c), F.S.

<sup>8</sup> Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE), 2011-2012 Prescription Drug Monitoring Program Annual Report, page 7 (available at [www.eforcse.com/docs/2012AnnualReport.pdf](http://www.eforcse.com/docs/2012AnnualReport.pdf)) (on file with Health Quality Subcommittee staff); information also came from Florida Department of Health document detailing the funding history of the PDMP, also on file with Health Quality Subcommittee staff.

FY 2011-2012	\$96,758
FY 2012-2013	\$102,654
<b>Total</b>	<b>\$440,072</b>

2. Federal Grants. The PDMP has been awarded three Harold Rogers Prescription Drug Monitoring Program grants from the U.S. Department of Justice and one additional federal grant. The award date and amount of each grant follows:

- On May 19, 2010, DOH was awarded an "Implementation" grant of \$400,000 to implement the prescription drug monitoring system.
- On September 19, 2010, DOH was awarded an "Enhancement" grant of \$400,000 for system enhancements.
- On August 21, 2012, DOH was awarded a second "Enhancement" grant of \$399,300 to enhance the PDMP.
- On September 20, 2012, DOH was awarded a grant of \$240,105 from the Substance Abuse and Mental Health Services Administration (SAMHSA) to integrate PDMP data into existing clinical workflow and technology and to expand interoperability.

The total amount of federal grants received is \$1,199,300. Of that amount, approximately \$566,460 has been expended in operation of the PDMP.

3. Private grants and donations. DOH has been awarded three private grants from the National Association of State Controlled Substance Authorities. These grants, totaling \$49,952, were used to create a website, to purchase office equipment, and to purchase promotional items.

The following chart illustrates the breakdown of costs for the PDMP for FY 2012-13 and FY 2013-14:

<b>COST</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Infrastructure	\$240,086	\$240,087
Personnel (2 FTEs)	\$211,016	\$211,016
Facilities	\$26,186	\$43,596
<b>TOTAL</b>	<b>\$477,288</b>	<b>\$494,699</b>

Section 893.0551, F.S., provides an exemption from public records for personal information of a patient and certain information concerning health care professionals outlined in the statute.<sup>9</sup> The statute details exceptions for disclosure of information after DOH ensures the legitimacy of the person's request for the information.<sup>10</sup>

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.<sup>11</sup> Health care practitioners began accessing the PDMP on October 17, 2011.<sup>12</sup> Law enforcement began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.<sup>13</sup>

Between 2011 and 2012, physicians and pharmacists used the PDMP database at least 2.6 million times.<sup>14</sup> Nearly 5,000 pharmacists entered 56 million prescriptions into the database.<sup>15</sup> Law enforcement queried the PDMP database more than 20,000 times in conjunction with active criminal investigations.<sup>16</sup>

<sup>9</sup> S. 893.0551(2)(a)-(h), F.S.

<sup>10</sup> S. 893.0551(3)(a)-(g), F.S.

<sup>11</sup> See supra, FN 24 at page 4.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id. at page 1.

<sup>15</sup> Id.

<sup>16</sup> Id.

The PDMP is currently funded through fiscal year 2012-2013.<sup>17</sup>

### **Effect of Proposed Changes**

Current law permits a dispenser of a controlled substance to report to the PDMP database the dispensing of that controlled substance up to 7 days following dispensing. The bill requires such reporting of dispensing of a controlled substance to be completed within 2 days of the dispensing. By requiring a shorter time period between dispensing a controlled substance and reporting the dispensing to the PDMP database, the bill will permit physicians and pharmacists to catch individuals who now attempt to “doctor shop” and obtain as many controlled substances as possible under the current 7-day window of reporting.

Current law only allows DOH to operate the PDMP with federal grants or private funding. The bill removes the prohibition against using funds from prescription drug manufacturers to implement the PDMP. As a result, funds from prescription drug manufacturers may be obtained and used to operate the PDMP and the database.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 893.055, F.S., relating to the prescription drug monitoring program.

**Section 2:** Provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

---

<sup>17</sup> Florida Department of Health, *Florida's Prescription Drug Monitoring Program*, Presentation to the Senate Health Policy Committee, January 23, 2013, slide 5 (on file with Health Quality Subcommittee staff).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

DOH has sufficient rule-making authority to implement the provisions of the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Health Quality Subcommittee adopted a strike-all amendment to House Bill 831. The strike-all:

- Requires all physicians, osteopathic physicians, naturopathic physicians, podiatrists, and dentists to consult the PDMP database to review a patient's controlled substance history prior to prescribing a controlled substance to the patient.
- Makes the failure to consult the PDMP database grounds for disciplinary action under the practice act for each of the specified prescribers required to consult the PDMP database.
- Removes the prohibition against using funds from prescription drug manufacturers to implement the PDMP.
- Reduces the time period for reporting to the PDMP database any dispensing of a controlled substance from seven days to two days.
- Clarifies that a physician who is required to access the PDMP database is not subject to a lawsuit, or the imposition of damages against him or her, for accessing or failing to access the PDMP database.

On April 9, 2013, the Health and Human Services Committee adopted a strike-all amendment to Committee Substitute for House Bill 831. The strike-all removes most provisions of the bill and keeps the following provisions:

- Reduces the time period for reporting to the PDMP database any dispensing of a controlled substance from seven days to two days.
- Removes the prohibition against using funds from prescription drug manufacturers to implement the PDMP.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.