

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 964

INTRODUCER: Fiscal Policy Committee; Health Policy Committee; and Senator Grimsley

SUBJECT: Prescription Drug Monitoring Program

DATE: February 29, 2016 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|-----------|------------------|
| 1. | <u>Stovall</u> | <u>Stovall</u> | <u>HP</u> | Fav/CS |
| 2. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | Favorable |
| 3. | <u>Jones</u> | <u>Hrdlicka</u> | <u>FP</u> | Fav/CS |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 964 exempts a rehabilitative hospital, assisted living facility, or nursing home that dispenses a dosage of a controlled substance to a patient from reporting that act of dispensing to the prescription drug monitoring program (PDMP).

Section 893.055, F.S., is amended to allow the designee of a pharmacy, prescriber, or dispenser's to have access to information in the PDMP database that relates to a patient of the pharmacy, prescriber, or dispenser. The bill also allows a designee of a prescriber or dispenser to have access to information that relates to a patient of the prescriber or dispenser for the purpose of reviewing a patient's controlled drug prescription history.

The bill amends s. 893.0551, F.S., to require the DOH to disclose confidential and exempt information in the PDMP to the designee of a health care practitioner, pharmacist, pharmacy, prescriber, or dispenser, upon receiving the request and verifying the legitimacy of the request.

The bill also authorizes impaired practitioner consultants to request access to the PDMP information relating to impaired practitioner program participants, or a person who is referred to the program, agreed to be evaluated or monitored through the program, and has separately agreed in writing to the consultant access to the information.

The bill has a positive fiscal impact on the private sector and a negative fiscal impact on the Department of Health. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2016.

II. Present Situation:

The Prescription Drug Monitoring Program

Starting in the early 2000s, Florida began experiencing an increase in deaths resulting from prescription drug abuse. In 2010, the former Florida Office of Drug Control (FODC) identified prescription drug abuse as “the most threatening substance abuse issue in Florida.”¹ According to the FODC, between 2003 and 2009, the number of deaths caused by at least one prescription drug increased by 102 percent (from 1,234 to 2,488). The FODC remarked that these numbers translated into seven Floridians dying from prescription drug overdoses per day.²

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.³

The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.⁴ The PDMP became operational on September 1, 2011, and began receiving prescription data from pharmacies and dispensing practitioners.⁵ Dispensers have reported over 163 million controlled substance prescriptions to the PDMP since its inception.⁶ Health care practitioners began accessing the PDMP on October 17, 2011. Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.⁷

Dispensers of controlled substances listed in Schedule II, Schedule III, or Schedule IV of s. 893.03, F.S., must report specified information to the PDMP database within 7 days after dispensing, each time the controlled substance is dispensed. The information required to be reported includes:

- Name of the dispensing practitioner and Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier;
- Date the prescription is dispensed and method of payment;
- Full name, address, and date of birth of the person for whom the prescription was written;
- Name, national drug code, quantity, and strength of the controlled substance dispensed;

¹ Executive Office of the Governor, *Florida Office of Drug Control 2010 Annual Report*, p. 8 (on file with the Senate Committee on Health Policy and the Senate Committee on Criminal Justice).

² *Id.*

³ See chs. 2009-198, 2010-211, and 2011-141, L.O.F.

⁴ Section 893.055(2)(a), F.S.

⁵ Florida Department of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report*, p. 3, (December 1, 2013), available at <http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf> (last visited on Feb. 23, 2016).

⁶ Florida Department of Health, *2014-2015 Prescription Drug Monitoring Program Annual Report*, p. 4, (December 1, 2015), available at <http://www.floridahealth.gov/statistics-and-data/e-forcse/news-reports/documents/2015-pdmp-annual-report.pdf> (last visited on Feb. 23, 2016).

⁷ *Supra* note 5.

- Full name, Drug Enforcement Administration registration number, and address of the pharmacy or other location from which the controlled substance was dispensed;
- Name of the pharmacy or practitioner, other than a pharmacist, dispensing the controlled substance and the practitioner's National Provider Identification; and
- Other appropriate identifying information as determined by the Department of Health (DOH) rule.⁸

Current law exempts certain acts of dispensing or administering from PDMP reporting:

- A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session;
- A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state;
- A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections;
- A practitioner when administering a controlled substance in the emergency room of a licensed hospital;
- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16; and
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.⁹

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the DOH under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and in Art. I, s. 24(a) of the State Constitution.¹⁰

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, naturopathic physicians, optometrists, advanced registered nurse practitioners, physician assistants, and pharmacists.¹¹ Currently, prescribers are not required to consult the PDMP database before prescribing a controlled substance for a patient, however physicians and pharmacists have made over 21 million requests to view patients' controlled substance history.¹²

⁸ Section 893.055(3), F.S.

⁹ Section 893.055(5), F.S.

¹⁰ Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number. Section 893.0551(2), F.S.

¹¹ Section 893.055(7)(b), F.S.

¹² *Supra* note 6.

The following entities do not have direct access to the PDMP database but can request access from the PDMP manager:

- The DOH or certain health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations¹³ involving potential criminal activity, fraud, or theft regarding prescribed controlled substances if the law enforcement agency has entered into a user agreement with the DOH; and
- Patients, or the legal guardians or designated health care surrogates of incapacitated patients.¹⁴

After an extensive process to validate and authenticate the request and the requestor, the PDMP manager or support staff provides the specific information requested.¹⁵

Impaired Practitioner Consultants

The DOH administers the impaired practitioner treatment program to ensure that licensed health care practitioners, applicants for licensure, and students enrolled in prelicensure education programs who are impaired and may pose a threat to the public if allowed to obtain or retain a license are evaluated and referred for treatment. Impaired practitioner consultants (IPC) are retained by the DOH to monitor the treatment of an impaired practitioner and coordinate services.¹⁶ An IPC must be a licensed physician, a licensed nurse, or an entity with a licensed physician or nurse as its medical director.¹⁷ The IPCs assist the DOH in determining if the practitioner is actually impaired, connecting the practitioner to appropriate resources for treatment of the impairment, and monitoring the practitioner's progress.¹⁸ There are two IPC entities currently retained by the DOH: the Intervention Project for Nurses and the Professionals Resource Network for other health care professions.

III. Effect of Proposed Changes:

The bill amends s. 893.055, F.S., to exempt a rehabilitative hospital, assisted living facility, or nursing home that dispenses a certain dosage of a controlled substance, as needed, to a patient as ordered by the patient's treating physician from reporting that act of dispensing to the PDMP database.

Section 893.055, F.S., is also amended to allow the designee of a pharmacy, prescriber, or dispenser's to have access to information in the PDMP database that relates to a patient of the pharmacy, prescriber, or dispenser. The bill also allows a designee of a prescriber or dispenser to have access to information that relates to a patient of the prescriber or dispenser for the purpose of reviewing a patient's controlled drug prescription history.

¹³ Section 893.055(1)(h), F.S., defines "active investigation" as an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

¹⁴ Section 893.055(7)(c)1.-4., F.S.

¹⁵ See s. 893.055(7)(c), F.S., and R. 64k-1.003, F.A.C.

¹⁶ Section 456.076(2)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 456.076(2)(c)1., F.S.

The bill amends s. 893.0551, F.S., to require the DOH to disclose confidential and exempt information in the PDMP to the designee of a health care practitioner, pharmacist, pharmacy, prescriber, or dispenser, upon receiving the request and verifying the legitimacy of the request.

The bill amends ss. 893.055 and 893.0551, F.S., to permit IPCs to request access to the information in the PDMP relating to impaired practitioner program participants, or a person who is referred to the program, agreed to be evaluated or monitored through the program, and has separately agreed in writing to the consultant access to the information.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not create or expand a public records exemption and therefore does not require a two-thirds vote for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Eliminating the reporting requirement will have a positive fiscal impact on rehabilitative hospitals, assisted living facilities, and nursing homes due to increased efficiencies and reduced administrative costs.

C. Government Sector Impact:

The bill may have a negative fiscal impact on the DOH because it may have to modify the PDMP in order to allow access to prescriber, dispenser, and pharmacy designees as well as impaired practitioner consultants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.055 and 893.0551.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Fiscal Policy on February 29, 2016:

The CS:

- Allows the designee of a pharmacy, prescriber, or dispenser's to have access to information in the PDMP database that relates to a patient of the pharmacy, prescriber, or dispenser;
- Allows a designee of a prescriber or dispenser to have access to information that relates to a patient of the prescriber or dispenser for the purpose of reviewing a patient's controlled drug prescription history; and
- Requires the DOH to disclose confidential and exempt information to the designee of a health care practitioner, pharmacist, pharmacy, prescriber, or dispenser, upon receiving the request and verifying the legitimacy of the request.

CS by Health Policy on February 1, 2016:

The CS authorizes a consultant in the impaired practitioner program indirect access to information in the PDMP concerning a participant or person referred to the PRN or IPN program.

- B. **Amendments:**

None.