

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 Criminal Justice

BILL: CS/SB 964

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Prescription Drug Monitoring Program

DATE: February 19, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Fav/CS
2.	Erickson	Cannon	CJ	Pre-meeting
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 database (PDMP).

The bill also authorizes impaired practitioner consultants to access the PDMP information of impaired practitioner program participants who have agreed in writing to allow the consultants such access.

II. Present Situation:

The Prescription Drug Monitoring Program

Starting in the early 2000s, Florida began experiencing a marked 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

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).

prescription drug increased by 102 percent (from 1,234 to 2,488).² The FODC remarked that these numbers translated into seven Floridians dying from prescription drug overdoses per day.³

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 Database (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.⁴

Chapter 2009-197, L.O.F., established the 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.⁵ The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.⁶ Dispensers have reported over 163 million controlled substance prescriptions to the PDMP since its inception.⁷ Health care practitioners began accessing the PDMP on October 17, 2011.⁸ Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.⁹

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 seven days after dispensing, each time the controlled substance is dispensed. The information required to be reported includes:¹⁰

- Name of the dispensing practitioner and Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier;
- Date the prescription is dispensed;
- Name, address, and date of birth of the person to whom the controlled substance is dispensed; and
- Name, national drug code, quantity, and strength of the controlled substance dispensed.¹¹

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

² *Id.*

³ *Id.*

⁴ See chs. 2009-197, 2010-211, and 2011-141, Laws of Fla.

⁵ Section 893.055(2)(a), F.S.

⁶ Florida Dep't of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report* (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. 16, 2016).

⁷ Florida Dep't of Health, *2014-2015 Prescription Drug Monitoring Program Annual Report* (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. 16, 2016).

⁸ *Supra* note 16

⁹ *Supra* note 16

¹⁰ The specific information reported depends upon the whether the reporter is a pharmacy or practitioner.

¹¹ See s. 893.055(3), F.S.

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.
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.¹²

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information¹³ 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 department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and in article I, section 24(a) of the State Constitution.¹⁴

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.¹⁵ Currently, prescribers are not required to consult the PDMP database before prescribing a controlled substance for a patient however physicians and pharmacists queried the database more than 3.7 million times in 2012, over 9.3 million times in 2014, and over 18.6 million times in 2015.¹⁶

Indirect access to the PDMP database is provided to:

- The Department of Health (DOH) or certain health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations¹⁷ 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.¹⁸

¹² See s. 893.055(5), F.S.

¹³ 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.

¹⁴ Section 893.0551(2)(a)-(h), F.S.

¹⁵ Section 893.055(7)(b), F.S.

¹⁶ *Supra* at notes 16 and 17.

¹⁷ Section 893.055(1)(h), F.S., defines an "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.

¹⁸ Section 893.055(7)(c)1.-4., F.S.

Indirect access means the person must request the information from the PDMP manager. After an extensive process to validate and authenticate the request and the requestor, the PDMP manager or support staff provides the specific information requested.¹⁹

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 pursuant to an order of the patient's treating physician from reporting that act of dispensing to the prescription drug monitoring program database. These settings are low-risk with administration being monitored by facility staff.

The bill amends ss. 893.055 and 893.0551, F.S., to authorize impaired practitioner consultants²⁰ to access the information in the PDMP relating to impaired practitioner program participants, or persons who are referred to the program, who have agreed voluntarily, in writing, to allow the consultant access to the information for initial evaluation and monitoring purposes. The impaired practitioner consultant is authorized indirect access only. Consequently, the program manager, or staff, must verify the authenticity of the request prior to release of the information.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

¹⁹ See s. 893.055(7)(c), F.S., and Rule 64k-1.003, F.A.C.

²⁰ The Department of Health (DOH) designates an approved impaired practitioner program "through contract with a consultant to initiate intervention, recommend evaluation, and refer impaired practitioners to treatment providers or treatment programs and monitor the progress of impaired practitioners in treatment. Approved impaired practitioner programs do not provide medical services." Rule 64B31-10.001, F.A.C. "Consultants operate approved impaired practitioner programs which receive allegations of licensee impairment, personally intervene or arrange intervention with licensees, refer licensees to approved treatment programs or treatment providers, evaluate treatment progress, and monitor continued care provided by approved programs and providers." *Id.* The DOH has designated Project for Nurses (IPN) and Professionals Resource Network (PRN) as the approved impaired practitioner programs. *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

None.

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 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.