

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 Appropriations

BILL: SB 7006

INTRODUCER: Health Policy Committee

SUBJECT: Direct-support Organization of the Prescription Drug Monitoring Program

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Lloyd</u>	<u>Stovall</u>		HP Submitted as Committee Bill
1.	<u>Loe</u>	<u>Williams</u>	<u>AHS</u>	Recommend: Favorable
2.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting

I. Summary:

SPB 7006 removes a repeal date of October 1, 2017, and re-enacts authority for the Department of Health (department) to establish and contract with a direct-support organization for fundraising and support of the prescription drug monitoring program (PDMP).

The bill also removes references to an obsolete Program Implementation and Oversight Task Force created upon enactment of the PDMP in 2009.

The bill has no fiscal impact.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Citizen Support Organization (CSOs) and Direct Support Organizations (DSOs)

Citizen support organizations (CSOs) and direct support organizations (DSOs) are private entities created to assist or support governmental entities in carrying out their duties. Prior to 2014, CSOs and DSOs had similar organizational and reporting requirements but no single standard or operational requirement, except that such organizations were often Florida not-for-profit corporations that required approval by the Department of State.¹

In 2014, the legislature conducted a review of the existing relationship between CSOs and DSOs and their governmental partners. One of the results of that review was legislation that established operational requirements and standards for CSOs and DSOs with an automatic review and repeal

¹ See Section 258.015(1), F.S.; Section 257.43(1), F.S.; specific CSOs and DSOs have the authority to operate and conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer fund and property; and make expenditures.

date for each organization.² Effective in August 2014, a CSO or DSO created or authorized pursuant to law or executive order and created, approved, or administered by an agency must submit annually the following to the appropriate agency:

- The name, mailing address, telephone number, and website address of the organization.
- The statutory authority or executive order that created the organization.
- A brief description of the mission and results obtained by the organization.
- A brief description of the plans of the organization for the next 3 fiscal years.
- A copy of the organization's code of ethics.
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).³

Each agency receiving the above information from a CSO or DSO must make the information available to the public through the agency's website. The agency's website must provide a link to the organization's website if the organization maintains a website.

Each agency must report the above required information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability annually by August 15. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.

Any contract between an agency and a CSO or DSO must be contingent upon the organization submitting and posting the required information. The agency head must terminate any contract between the agency and the organization if an organization fails to submit the required information for two consecutive years.

A law creating or authorizing the creation of a CSO or DSO is repealed on October 1 of the fifth year after enactment unless reviewed and saved from repeal through reenactment by the legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed and saved from repeal through reenactment by the legislature.

The 2014 law repeals existing statutory authority for specified CSOs and DSOs on October 1, 2017, October 1, 2018, and October 1, 2019, unless reviewed and saved from repeal by the legislature.

Audits of State Agency CSOs and DSOs

Section 215.981, F.S., provides that each CSO and DSO with annual expenditures in excess of \$100,000 created or authorized pursuant to law, and created, approved, or administered by a state agency – other than universities, community colleges, or district school boards – must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor

² Chapter 2014-96, s. 3, Laws of Fla. (creating s. 20.058, effective June 13, 2014).

³ See Section 20.058(1), F.S.

General and to the state agency responsible for creation, administration, or approval of the DSO or CSO.

Notwithstanding the above, CSOs and DSOs for the Department of Environmental Protection or the Department of Agriculture and Consumer Services that are not-for-profit with annual expenditures of less than \$300,000 are not required to have an independent audit. These departments establish accounting and financial management guidelines for the organizations under their jurisdiction and conduct operational and financial reviews of a selected number of CSOs and DSOs that fall below the \$300,000 threshold.

Florida PDMP Foundation, Inc.

The Florida PDMP Foundation, Inc., (Foundation) is a DSO that is a Florida not-for-profit corporation incorporated under ch. 617, F.S. Created by the legislature in 2009, its purpose is to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, and invest – in its own name – securities, funds, objects of value or other property, either real or personal, and make expenditures to provide funding to or for the indirect benefit of the department in furtherance of the PDMP, pursuant to s. 893.055(11)(a), F.S.⁴

The PDMP uses an electronic database system to monitor the prescribing and dispensing of certain controlled substances. In the first half of calendar year 2015, Florida reported more than 4,600 drug-related deaths.⁵ Prescription drugs continue to be found more often than illicit drugs both as the cause of death and present at death. Prescription drugs account for 68.9 percent of all drug occurrences in the Florida Department of Law Enforcement (*FDLE*) *Medical Examiners Interim Drug Report*.⁶

The overall mission of the Foundation as the DSO for the PDMP is to fundraise for the benefit of the PDMP in order to reduce drug abuse and diversion. Through June 2016, the Foundation reports assets over \$1.5 million in private and corporate contributions, of which \$1.4 million are currently being invested to provide for future funding needs.⁷ The Foundation also provided over \$11,000 in supplemental contributions to the state's prescription drug monitoring database, E-FORCSE (Electronic-Florida Online Reporting of Controlled Substances Evaluation), operations to support special event marketing and promotional projects.

The PDMP Foundation has two major goals. The first goal is to raise funds for the operation of E-FORCSE. The yearly cost to maintain the database is approximately \$600,000.⁸ The Foundation seeks funding from a number of sources, including corporations, individuals, and law

⁴ Florida PDMP Foundation, Inc., *Annual Report to the Department of Health*, (2016) p. 3, available at http://www.flpdmpfoundation.com/wp-content/uploads/2016/08/PDMPF_Annual_Report_2016.pdf (last visited Jan. 19, 2017).

⁵ Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners - Interim Report 2015*, pg. ii, available at <http://www.flpdmpfoundation.com/wp-content/uploads/2016/04/Medical-Examiner-Commissions-Interium-Report-2015.pdf>, (last visited Jan. 20, 2017).

⁶ Id.

⁷ Id.

⁸ Florida PDMP Foundation, *Goals*, <http://www.flpdmpfoundation.com/goals/> (last visited Jan. 20, 2017).

enforcement; however, the Foundation cannot receive funds from any corporation representing the pharmaceutical industry.⁹

Since inception, the E-FORCSE has received over \$2.4 million in federal grants for database enhancements and special projects.¹⁰ Several corporations have also donated funding for the initial start-up of the database, which became fully functional in September 2011.¹¹ The legislature appropriated \$500,000 in nonrecurring funds from the General Revenue Fund in Fiscal Year 2013-2014 towards its ongoing maintenance. The legislature also authorized the use of nonrecurring funds from the General Revenue Fund for Fiscal Year 2015-2016 and appropriated \$500,000 in recurring funds from the General Revenue Fund in Fiscal Year 2016-2017 to administer the PDMP. The department reports that the PDMP has sustainable funding through fiscal year 2019-2020.¹²

Major marketing of the PDMP by the Foundation began in 2014, which helped bring donations from sheriff's offices and police departments that donated Asset Forfeiture Funds.¹³ The Florida Sheriff's Association contributed \$20,000. In 2014, Attorney General Pam Bondi provided the PDMP Foundation with a \$1.973 million contribution from a pharmaceutical settlement.¹⁴

The second goal of the Foundation is to educate licensed health care providers and law enforcement officials about how to utilize the database in the management of controlled substances in patient care and active criminal investigations.¹⁵ Foundation representatives attend major conferences and trade shows with entities such as the Florida Medical Association, the Florida City and County Management Association, the Florida Sheriffs Association, the Florida Police Chiefs Association, the Florida Public Health Association, the Florida Dental Association, and the Florida Pharmacy Association to market the PDMP database and to seek corporate donations.¹⁶ The Foundation also uses these opportunities to market its online courses on the PDMP.

An Executive Director and a board of directors appointed by the State Surgeon General lead the Foundation. The statute permits a minimum of five members. The Foundation's board of directors currently has nine members.¹⁷ The members represent health care providers, physicians, the pharmaceutical industry, and a consumer advocate.¹⁸ The State Surgeon General provides guidance to the board members to ensure inappropriate sources, such as those who may benefit

⁹ Id. and s. 893.055(10), F.S. *But see* s. 893.055(17), F.S., where the legislature appropriated recurring general revenue funds in the 2016-2017 fiscal year to administer the PDMP. A similar provision was included in the 2015 Implementing Bill for the 2015-2016 fiscal year, and in 2013 the legislature appropriated \$500,000 for the 2013-2014 fiscal year only.

¹⁰ Florida PDMP Foundation, *Board of Directors Meeting Minutes* (Dec. 15, 2016) (on file with the Senate Committee on Health Policy).

¹¹ Florida PDMP Foundation, *Donations*, <http://www.flpdmpfoundation.com/donations/> (last visited: Jan. 20, 2017).

¹² Florida Department of Health, *EFORCSE 2015-2016 Prescription Drug Monitoring Program Annual Report, December 1, 2016*, p. 8, <http://www.floridahealth.gov/statistics-and-data/e-forcse/documents/2016PDMPAnnualReport.pdf> (last visited: Jan. 22, 2017).

¹³ *Supra* note 11.

¹⁴ *Supra* note 11.

¹⁵ *Supra* note 8.

¹⁶ *Supra* note 4.

¹⁷ Florida PDMP Foundation, *About Florida PDMP Foundation, Inc.*, <http://www.flpdmpfoundation.com/about/> (last visited: Jan. 19, 2017).

¹⁸ Id.

from the purchase of goods or services by the department in furtherance of the program, do not donate funds for the PDMP.

The Foundation has executed a two-year contract with the department and operates tax-exempt under section 501(c)(3) of the federal Internal Revenue Code.¹⁹ The department must certify annually that the Foundation is in compliance with its contract with the department and that continuation of that contract is in the best interest of the State of Florida. On August 15, 2016, the department sent its annual certification letters to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Accountability.²⁰

The Foundation's Annual Report includes a brief description of its *Three Year Strategic Plan* as required in s. 20.058, F.S., and a copy of its current two-year contract with the department.

The Foundation's annual expenditures have been less than \$100,000; therefore, no financial audit has been or is required to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General.²¹ To comply with other state reporting rules, the Foundation submits the end-of-the-fiscal year's (June 30) bank statements to the state Treasury.²²

III. Effect of Proposed Changes:

The bill amends s. 893.055, F.S., to remove the scheduled repeal date of October 1, 2017, for the PDMP DSO, and the Foundation is saved from repeal. The bill deletes obsolete language regarding an expired task force.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ Florida PDMP Foundation, *Attachment A - Certification of Direct Support Organization Contract Compliance*, http://www.flpdmpfoundation.com/wp-content/uploads/2016/08/PDMPF_Annual_Report_2016.pdf (last visited: Jan. 20, 2017).

²⁰ Florida Department of Health, *Cover Letters for 2016 Florida PDMP Foundation, Inc., Annual Report and Annual Certification Letters to Governor Rick Scott, Senate President Andy Gardiner, Speaker Steve Crisafulli, and R. Phillip Twogood (August 15, 2016)* (on file with Senate Health Policy Committee).

²¹ Transfers from the Foundation to the department for PDMP activities are not classified as expenditures of the Foundation.

²² Email between Department of Health staff, PDMP Foundation staff, and Department of Financial Services staff (July and August 2013) (on file with Senate Committee on Health Policy).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Foundation's annual expenditures have been less than \$100,000; therefore, no financial audit has been or is required to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General. To be compliant with other state reporting rules, the Foundation submits the end-of-the-fiscal year's (June 30) bank statements to the state Treasury.²³ Transfers to the department, which in some years have exceeded \$100,000 cumulatively, have not counted toward triggering an independent audit of the Foundation.

VIII. Statutes Affected:

This bill substantially amends section 893.055, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²³ Id.