SENATE BILL 710

J1 0lr3038

By: **Senator Bailey**
Introduced and read first time: February 3, 2020
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Health – General – Prescription Drug Monitoring Program – County Health Officer

FOR the purpose of requiring the Prescription Drug Monitoring Program, in accordance with regulations adopted by the Secretary of Health, to disclose certain data to a local health department or a local health officer for a certain purpose; authorizing the Program to request the technical advisory committee to review the request and provide certain guidance and interpretation before disclosing information under a certain provision of this Act; and generally relating to the Prescription Drug Monitoring Program.

BY repealing and reenacting, without amendments,
Article – Health – General
Section 21–2A–06(a), (c), (d), and (f)
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 21–2A–06(b) and (e)
Annotated Code of Maryland
(2019 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

21–2A–06.

(a) Prescription monitoring data:

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

(1) Are confidential and privileged, and not subject to discovery, subpoena, or other means of legal compulsion in civil litigation;

(2) Are not public records; and

(3) Except as provided in subsections (b), (c), (d), and (f) of this section or as otherwise provided by law, may not be disclosed to any person.

(b) The Program shall disclose prescription monitoring data, in accordance with regulations adopted by the Secretary, to:

(1) A prescriber, or a licensed health care practitioner authorized by the prescriber, in connection with the medical care of a patient;

(2) A dispenser, or a licensed health care practitioner authorized by the dispenser, in connection with the dispensing of a monitored prescription drug;

(3) A federal law enforcement agency or a State or local law enforcement agency, on issuance of a subpoena, for the purpose of furthering an existing bona fide individual investigation;

(4) A licensing entity, on issuance of an administrative subpoena, for the purposes of furthering an existing bona fide individual investigation;

(5) A rehabilitation program under a health occupations board, on issuance of an administrative subpoena;

(6) A patient with respect to prescription monitoring data about the patient;

(7) The Office of the Attorney General, on issuance of a subpoena for the purpose of furthering a bona fide existing investigation;

(8) Subject to subsection (i) of this section, authorized users of another state's prescription drug monitoring program or any other authorized local, state, territorial, or federal agency in connection with the provision of medical care;

(9) The following units of the Department, on approval of the Secretary, for the purpose of furthering an existing bona fide individual investigation:

(i) The Maryland Medical Assistance Program;

(ii) The Office of the Inspector General;

(iii) The Office of Health Care Quality; and

(iv) The Office;

(10) The technical advisory committee established under § 21–2A–07 of this subtitle for the purposes set forth in subsections (c), (d), and (e) of this section;

(11) The medical director of a health care facility, as defined in § 19–114 of this article, or the medical director's designee, for the purpose of providing health care practitioners employed or contractually employed at the health care facility access to the prescription monitoring data in connection with the provision of medical care or the dispensing of a monitored prescription drug to a patient of the health care facility;

(12) The Office of the Chief Medical Examiner in accordance with § 5–309 of this article; **[**or**]**

(13) **A LOCAL HEALTH DEPARTMENT OR LOCAL HEALTH OFFICER FOR THE PURPOSE OF EVALUATING THE DISTRIBUTION OR ABUSE OF A MONITORED PRESCRIPTION DRUG; OR**

(14) The following entities, on approval of the Secretary and for the purpose of furthering an existing bona fide individual case review:

(i) The State Child Fatality Review Team or a local child fatality review team established under Title 5, Subtitle 7 of this article, on request from the chair of the State or local team;

(ii) A local drug overdose fatality review team established under § 5–902 of this article, on request from the chair of the local team;

(iii) The Maternal Mortality Review Program established under § 13–1203 of this article, on request from the Program; and

(iv) A medical review committee described in § 1–401(b)(3) of the Health Occupations Article, on request from the committee.

(c) (1) In accordance with regulations adopted by the Secretary:

(i) The Program shall review prescription monitoring data for indications of possible misuse or abuse of a monitored prescription drug; and

(ii) If the Program's review of prescription monitoring data indicates possible misuse or abuse of a monitored prescription drug, the Program shall:

1. Report the possible misuse or abuse to the prescriber or dispenser of the monitored prescription drug; and

2. Provide education to the prescriber or dispenser.

(2) Before the Program reports the possible misuse or abuse of a monitored prescription drug to a prescriber or dispenser under this subsection, the Program may obtain from the technical advisory committee:

(i) Clinical guidance regarding indications of possible misuse or abuse; and

(ii) Interpretation of the prescription monitoring data that indicates possible misuse or abuse.

(d) (1) In accordance with regulations adopted by the Secretary and subject to paragraph (3) of this subsection, the Program shall review prescription monitoring data for indications of a possible violation of law or a possible breach of professional standards by a prescriber or a dispenser.

(2) If the Program's review indicates a possible violation of law or a possible breach of professional standards by a prescriber or a dispenser, the Program:

(i) 1. Shall notify the prescriber or dispenser of the possible violation of law or possible breach of professional standards; and

2. Shall provide education to the prescriber or dispenser; and

(ii) Subject to paragraph (4) of this subsection, may provide prescription monitoring data to the Office for further investigation.

(3) (i) Before the Program provides notification of a possible violation of law or a possible breach of professional standards to a prescriber or a dispenser, the Program shall obtain from the technical advisory committee:

1. Clinical guidance regarding methods used to identify a possible violation of law or a possible breach of professional standards; and

2. Interpretation of the prescription monitoring data advising whether the method identifies a possible violation of law or a possible breach of professional standards.

(ii) In determining whether its review indicates a possible violation of law or a possible breach of professional standards by a prescriber or dispenser, the Program shall take into account to the extent practicable the particular specialty, circumstances, patient type, and location of the prescriber or dispenser.

(4) (i) If methods developed under paragraph (3)(i) of this subsection indicate a possible violation of law or a possible breach of professional standards and the Program determines that outreach and education to the prescriber or dispenser is inadequate to address the possible breach or violation, the Program may refer the possible

violation of law or a possible breach of professional standards along with prescription monitoring data to the Office for further investigation, provided that the Program:

1. Provides notice and an opportunity to the technical advisory committee to make recommendations within 10 business days regarding interpretation of the data;

2. Provides the recommendations of the technical advisory committee, if any, to the Office; and

3. Notifies the prescriber or the dispenser that the prescription monitoring data will be provided to the Office for further investigation.

(ii) On receipt of prescription monitoring data and relevant records under paragraph (2) of this subsection, the Office shall:

1. Review the prescription monitoring data and records, along with any additional information the Office may obtain as part of its investigation; and

2. If it determines that there has been a violation of law or a breach of professional standards, take any action authorized by law regarding the violation or breach, including providing the prescription monitoring data and records to the appropriate licensing entity for possible disciplinary action.

(e) (1) Before the Program discloses information under subsection (b)(3), (5), (6), (8), **[**or**]** (9)**, OR (13)** of this section, the Program may request that the technical advisory committee:

(i) Review the requests for information;

(ii) Provide clinical guidance and interpretation of the information requested to the Secretary to assist in the Secretary's decision on how to respond to a judicial subpoena, administrative subpoena, or other request; and

(iii) Provide clinical guidance and interpretation of the information requested to the authorized recipient of the information.

(2) The Program, in consultation with the Board, shall consider policies and procedures for determining the circumstances in which the review of requests for information and the provision of clinical guidance and interpretation of information by the technical advisory committee under paragraph (1) of this subsection is feasible and desirable.

(f) Except as provided by regulations adopted by the Secretary, a person who receives prescription monitoring data from the Program may not disclose the data.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.