

May 26, 2006

The Honorable Thomas V. Mike Miller, Jr.  
Senate President  
State House  
Annapolis, MD 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed Senate Bill 333 – *Prescription Drug Monitoring Program*.

This bill requires the Department of Health and Mental Hygiene (DHMH), in consultation with a newly established Advisory Board on Prescription Drug Monitoring, to establish a centralized prescription drug monitoring program that electronically collects and stores data concerning controlled prescription drugs. Pharmacists dispensing Schedule I through IV controlled substances in the State would be required to submit to the program data regarding each prescription including the date and quantity of the drug dispensed, the prescribing physician, and a patient identifier.

Implementation of the program is contingent on the Advisory Board's ability to obtain federal, private, or State funds. Implementation, however, is not contingent on the Board receiving full or even a majority of the necessary funding. If federal or private funds do not cover the entire cost of the program, DHMH may be required to fund the remaining costs. Assuming federal funding is obtained, DHMH federal and general fund expenditures could increase by \$1 million in fiscal year 2007, including a one-time cost of \$500,000 to design and implement the database. The bill specifically prohibits DHMH from seeking funds through fees from providers.

Aside from the serious fiscal implications of Senate Bill 333, there are several policy concerns with this bill. First, and most alarming, is the potential encroachment on adequate pain management. While it is important to decrease the number of Maryland adults and adolescents who are engaging in prescription drug abuse and diversion, it is essential to ensure that legitimate pain management would not be hampered for individuals who are suffering from chronic and debilitating diseases. Senate Bill 333 could have a chilling effect on providers prescribing pain management. Prescribers are already fearful of inappropriate or unfounded scrutiny of their prescribing practices. The provisions of this bill may exacerbate untreated or inadequately treated pain management. Unfortunately, even after numerous amendments, this bill focuses on law enforcement, not treatment.

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Second, Senate Bill 333 does not adequately address patient confidentiality. Although the Legislature removed the prescriber's diagnosis code from the database, many prescription medications are commonly linked to certain ailments. Unfortunately, there are stigmas associated with certain diseases. In addition, a patient's medical condition will be available to a multidisciplinary consultation team, established in this bill. This bill opens the doors to non-medical individuals accessing confidential physician-patient information since it does not specifically state who is an authorized recipient.

Third, this legislation is problematic because it can be interpreted as providing the federal Drug Enforcement Agency (DEA) and others with unfettered access to the prescription drug monitoring database. Accordingly, an organization like the DEA could search the database for the sole purpose of finding offenders to prosecute.

Fourth, Senate Bill 333 emphasizes law enforcement over treatment. It is questionable whether prescription drug data alone can be used to identify problematic prescribing patterns especially since the data will not be supplemented by additional information such as medical records. I do not advocate adding medical records to the database but believe that the prescription drug data could be misinterpreted without the proper context.

Finally, Senate Bill 333 creates an Advisory Board after legislation has been introduced. The Advisory Group does not have the ability to truly advise DHMH on how to implement a successful prescription drug monitoring program because the law has already been written. Legislation needs to be drafted after such as group has been consulted.

Given all of these serious questions surrounding Senate Bill 333, I have asked the Department of Health and Mental Hygiene, in consultation with the Maryland Health Care Commission, to form an advisory group of all the relevant stakeholders, including but not limited to physicians, nurses, pharmacists, hospitals, and advocates to examine prescription drug monitoring and other ways to limit prescription drug abuse and diversion. This is an important issue that must be addressed in the appropriate manner. The advisory group will focus on issues such as the use of electronic records, electronic monitoring of controlled drug prescriptions, a standard of care for pain management, patient confidentiality, and will emphasize the treatment of addiction. DHMH and the Maryland Health Care Commission will be required to report on their progress and recommendations prior to the end of this year so that Maryland can move forward to address these important issues.

For the above stated reason, I have vetoed Senate Bill 333.

Very truly yours,

Robert L. Ehrlich, Jr.  
Governor