



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES
PRESCRIPTION DRUG MONITORING PROGRAM

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PRESCRIPTION DRUG MONITORING PROGRAM ADVISORY COUNCIL
PUBLIC MINUTES OF THE MARCH 21, 2022 MEETING

The March 21, 2022, meeting of the PDMP Advisory Council (the “AC” or “Council”) convened at 3:04 p.m. at the Department of Health and Human Services, 29 Hazen Drive, Concord, New Hampshire as well as via ZOOM with the following members present and eligible to vote:

Council Members in Attendance:

Chairman David Strang, MD, NH Medical Society
Tonya Carlton, RPH, Wentworth Douglas Hospital
Sarah Garland, DVM, NH Veterinary Medical Association
Joseph Guthrie, NH House of Representatives (via Zoom)
Joseph Harding, NH Department of Health and Human Services
Gene Harkless, APRN, NH Board of Nursing (BON) (via Zoom)
Nicole Harrington, RPH, Commissioner, NH Board of Pharmacy (BOP)
Kelly Whelan, MD, Dental Society
Thomas Worboys, NH Attorney General’s Office

Council Members Absent:

Stephen Crawford, DVM, NH Dept. of Veterinary Medicine
Robert Giuda, NH Senate
Bradley Osgood, NH Police Chiefs’ Association
Jay Patel, DDS, NH Board of Dental Examiners
Annika Stanley-Smith, Governor’s Commission on Alcohol & Other Drugs
Michael Viggiano, RPH, NH State Pharmacy Associations
VACANT, NH APRN Society
VACANT, NH Board of Medicine (BOM)
VACANT, Governor’s Commission on Alcohol & Other Drugs (public)
VACANT, NH House of Representatives

Staff in Attendance:

Michael Holt, DPHS Administrator
Joanie Foss, Administrative Assistant, NH PDMP
Mark Cioffi, Program Analyst, NH PDMP
Leslie Pond, Auditor, NH PDMP

Others in Attendance:

Haley Alder, Bamboo Health (via Zoom)
Kathy Bizarro-Thunberg, NH Hospital Association (via Zoom)
Jacob Cooper, Bamboo Health (via Zoom)
Taylor Derringer, Bamboo Health (via Zoom)
Anthony Galdieri, NH Attorney General's Office (via Zoom)
Xiaohui Geng, Opioid Overdose Surveillance Coord./OD2A Principle Investigator (via Zoom)
Rep. Gary Merchant (via Zoom)

I. Welcome – Introductions

II. Review/Acceptance of December 13, 2021, and January 18, 2022 Meeting Minutes

As a quorum of Advisory Council members were not physically present, this item was tabled until the next meeting.

III. E-Prescribing (HB143) (Representative Gary Merchant)

D. Strang introduced Rep. Gary Merchant, sponsor of HB143, which was signed into law last year, with an implementation date of Jan. 1, 2022. This law, mandating the electronic submission of controlled substance prescriptions, was discussed at the Dec. 13, 2021 AC meeting, focusing on who would be responsible for ensuring compliance. It was noted by M. Holt at that meeting, that the PDMP had no means to enforce compliance with this new law. Chairman Strang stated he had discussed this with Christine Senko at the Board of Medicine this week and she stated that that board had no plans in place to enforce compliance, but had received several reports that pharmacies had refused to fill valid controlled substance prescriptions because they were not submitted electronically.

Rep. Merchant explained the background of HB143, why it was initially proposed and why it became a law. The rationale for HB143 was to reduce prescription fraud as well as enhance overall data collection. As of January 1, Medicare Part D controlled substance prescriptions are required to be e-prescribed. Rep. Merchant suggested that with the pharmacist's ability to enter data into the NH PDMP database pertaining to prescription submission type (i.e. paper, verbal, fax, etc.), a report can be generated and presented to the respective licensing board (the enforcer/educator) to let them know a prescriber's compliance percentage. Rep. Merchant suggested the various licensing boards could then reach out to prescribers and let them know their compliance percentage, therefore making the boards responsible for assessing and implementing compliance. M. Cioffi will provide a quarterly data report by prescriber class showing submission type, starting with the June meeting (e.g. Dentists submitted controlled substance prescriptions electronically 85% of the time this quarter). M. Cioffi stated the PDMP database can collect data on submission types but if there is an allowed exception, the database has no way to determine if the prescription came in electronically as required.

Rep. Merchant stated that there are some exceptions to e-prescribing (i.e. prescribers that have a low volume of controlled substance prescriptions). Prescribers that qualify for an exception can reach out to their respective board and ask for a waiver from e-prescribing. He also stated that pharmacies were never meant to be the enforcer of this law and turn away controlled substance

prescriptions that were not submitted electronically (as they would have no way to know if a prescriber had a valid waiver from e-prescribing).

M. Holt explained that currently, submission type is not a required field in the PDMP. The PDMP is willing to turn on that field to make it a required field, even though there is no statutory mandate to do so. Rep. Merchant, D. Strang, J. Guthrie, and M. Holt will meet to discuss the mandate issue.

D. Strang asked that N. Harrington bring back to the NH BOP two separate talking points: 1) send a communication to all pharmacies emphasizing that it is illegal to turn away a validly written prescription; 2) send a communication to all pharmacies asking that submission type be specified in the database but, recognize that this is not a required field at this time.

IV. **DEA Lawsuit** (Attorney Anthony Galdieri)

D. Strang gave an introductory explanation of the lawsuit to the Council. This suit was brought by the DEA in 2018, when the Program Manager refused to turn over PDMP data to the DEA under a subpoena (NH statute requires a court order, i.e. a search warrant, along with a letter stating an open investigation was under way into the recipient of the prescription). Attorney Galdieri explained that NH lost early decisions in the suit and the case was ultimately argued at the First Circuit Court of Appeals in 2019. The decision came in January 2022, but took so long to conclude, that of the 3 judges deciding (one a former NH Attorney General), one of them actually expired before the case was decided. The court initially found that the target of the subpoena was not the State of NH but a state official in their official capacity being asked to remove data from a State database. The second conclusion was that even if it was a subpoena against the State of NH, that the states, their agencies and their officials acting in their official capacities, were persons within the meaning of the Federal statute that allows the DEA to issue, serve, and enforce these administrative subpoenas. The court concluded that the 4th amendment (defense cited by the State of NH) ultimately does not shield PDMP prescription records because of a patient's lack of a reasonable expectation of privacy in that data. On March 14, the State filed a motion to ask the First Circuit Court of Appeals to rehear this case *en banc*. If the First Circuit denies the motion, then the State could ask the United States Supreme Court to hear it, but there is no guarantee it would. Attorney Galdieri will keep the Council informed about developments as they occur. M. Holt and Attorney Galdieri will meet to discuss what the new Program Manager will need to know pertaining to the lawsuit.

V. **DHHS Update** (Michael Holt, DHHS Administrator)

- A new PDMP Administrator has been hired. His name is Shawn Jackson and he will start on April 1.
- The Annual Report will go to the HHS Oversight Committee in April. The report will be posted to the PDMP website as soon as possible.
- The contract with Bamboo Health was signed at the Governor & Council meeting at the end of January. EHR integration was also passed and we have started the integration process by providing access to the PDMP for patient searches by the Veterans Health Administration (VHA). Other work plan items will be addressed once the new Program Administrator starts.

VI. **New Business**

- Haley Alder, Client Relations Manager from Bamboo Health introduced herself and asked Jacob Cooper, Manager for Client Relations to speak about the prescriber reports.
- J. Cooper showed a screen shot of a prescriber report and explained the reports are for prescribers to see how their personal behaviors compare to their peers according to specialty and role. He reviewed various aspects of the report and pointed out a couple of new enhancements. Initially the reports were accessed via email but are now embedded in the prescriber's dashboard. Whereas the report used to be in PDF it is now interactive. J. Harding would like to see aggregate data by specialty for the next couple of quarters to see a particular specialty's prescribing pattern. D. Strang suggested looking at trends. M. Cioffi will create a baseline trend using the administrative report.
- Taylor Derringer, Project Manager for Gateway Integration introduced herself and will be helping with EHR integration. K. Bizarro-Thunberg would like to meet with M. Holt, and T. Derringer to discuss what the EHR onboarding process would look like for hospitals. M. Holt will set up this meeting.

VII. Old business

- Advisory Council Orientation/Welcome Packet Committee:
D. Strang stated that per the Council's request at the Dec. 13, 2021 meeting, the Committee (D. Strang, S. Garland, J. Harding, M. Viggiano) had created an additional document to include in the Packet. He asked J. Harding to set up a Zoom meeting so the Committee members could merge the two documents and finalize a packet for review at the next AC meeting in June.

VIII. Next Meeting Date:

June 20, 2022, 3:00-5:00 p.m. A calendar invitation has been sent.

IX. Adjournment:

J. Harding motioned to adjourn the meeting with a second by T. Carlton. With unanimous consent, the meeting was adjourned at 4:42 p.m.