

2015 DRAFTING REQUEST

Bill

Received: **10/15/2014** Received By: **mgallagh**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget 7-0370** By/Representing: **Potts**
May Contact: Drafter: **mgallagh**
Subject: **Criminal Law - drugs** Addl. Drafters:
Occupational Reg. - misc Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**
michael.duchek@legis.wisconsin.gov
sbostatlanguage@webapps.wi.gov

Pre Topic:

DOA:.....Potts, BB0148 -

Topic:

Move prescription drug monitoring program to controlled substances board.

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	mgallagh 11/18/2014	scalvin 11/24/2014	rschlue 11/7/2014	_____	sbasford 11/7/2014		
/P2	mgallagh 12/17/2014	eweiss 12/17/2014	jfrantze 11/24/2014	_____	lparisi 11/24/2014		State
/P3	mgallagh	kfollett	rschlue	_____	sbasford		State

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	1/23/2015	1/23/2015	12/18/2014	_____	12/18/2014		
/P4	mgallagh 1/30/2015	kfollett 1/30/2015	jmurphy 1/30/2015	_____ _____	sbasford 1/23/2015		State
/P5				_____ _____	srose 1/30/2015		State

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Jan 1/30
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/P3 emw
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FE Sent For: *PZ SAC* *PZ SAC* *Jb*
11/21/2014 *11/24/2014* *Rs 11/24*
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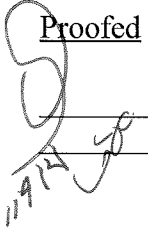
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/P1	mgallagh 10/31/2014	scalvin /P1 11/5/2014	/P1 sac 11/07/2014				

FE Sent For:

<END>

Gallagher, Michael

From: Hanaman, Cathlene
Sent: Tuesday, October 14, 2014 4:49 PM
To: Duchek, Michael; Gallagher, Michael
Subject: FW: Statutory Language Drafting Request - BB0148

From: andrew.potts@wisconsin.gov [mailto:andrew.potts@wisconsin.gov]
Sent: Tuesday, October 14, 2014 4:46 PM
To: Hanaman, Cathlene
Cc: Frederick, Caitlin - DOA; Potts, Andrew R - DOA; Connor, Christopher B - DOA
Subject: Statutory Language Drafting Request - BB0148

Biennial Budget: 2015-17

DOA Tracking Code: BB0148

Topic: Prescription Drug Monitoring Program

SBO Team: AEJ

SBO Analyst: Potts, Andrew
Phone: 608-267-0370
E-mail: andrew.potts@wisconsin.gov

Agency Acronym: DRL

Agency Number: 165

Priority: Medium

Intent:

Move the PDMP from the Pharmacy Examining Board to the Controlled Substances Board (CSB). Add Sec of DSPS or designee, chair of the Medical Examining Board or designee, the chair of the Dentistry Examining Board or designee and the chair of the Board of Nursing or designee to the CSB. Remove the psychiatrist member from the CSB.

Give the CSB the authority to monitor and review PDMP records. Authorize the CSB to refer pharmacies and practitioners that do not comply with the PDMP to the appropriate regulatory board. Failure to comply includes failure to deliver records to the PDMP as required and when a prescriber, dispenser or patient may be engaged in critically dangerous behavior. Authorize the CSB to disclose PDMP information regulatory boards and state agencies.

Attachments: False

Please send completed drafts to SBOStatlanguage@webapps.wi.gov



DOA:.....Potts, BB0148 - Move prescription drug monitoring program to controlled substances board.

FOR 2015-2017 BUDGET — NOT READY FOR INTRODUCTION

D-Note

do not gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

SAFETY AND PROFESSIONAL SERVICES

PROFESSIONAL LICENSURE

Current law requires the Pharmacy Examining Board to establish by rule and administer a prescription drug monitoring program (PDMP). The PDMP requires pharmacies and physicians or other practitioners to generate a record documenting each dispensing of a prescription drug by the pharmacy or practitioner that is covered by the PDMP, generally a controlled substance or other drug the Pharmacy Examining Board identifies as having a substantial potential for abuse. Among other requirements, the pharmacy or practitioner must deliver records generated under the PDMP to the Pharmacy Examining Board.

This bill transfers the PDMP to the Controlled Substances Board, which, like the Pharmacy Examining Board, is attached to DSPS.

Also, under current law, the membership of the Controlled Substances Board consists of all of the following ~~five~~ members:

1. The attorney general or his or her designee.
2. The secretary of health services or his or her designee.
3. The secretary of agriculture, trade and consumer protection or his or her designee.

SIX

4. The chairperson of the Pharmacy Examining Board

4. One psychiatrist for a three-year term.

5. One pharmacologist for a three-year term.

The bill eliminates the psychiatrist member from that list but adds all of the following, for a total of ~~eight~~ ^{nine} members:

1. The secretary of safety and professional services or his or her designee.

2. The chairperson of the Medical Examining Board or his or her designee.

3. The chairperson of the Dentistry Examining Board or his or her designee.

4. The chairperson of the Board of Nursing or his or her designee.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

^x
SECTION 1. 15.405 (5g) of the statutes is amended to read:

15.405 (5g) CONTROLLED SUBSTANCES BOARD. There is created in the department of safety and professional services a controlled substances board consisting of the attorney general, the secretary of health services and, the secretary of agriculture, trade and consumer protection, and the secretary of safety and professional services, or their designees; the chairperson of the pharmacy examining board, the chairperson of the medical examining board, the chairperson of the dentistry examining board, and the chairperson of the board of nursing, or a designee their designees; and ~~one psychiatrist and one pharmacologist appointed for a 3-year terms term.~~

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27, 403, 485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264, 265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321, 417; 1997 a. 96, 252, 300; 2001 a. 16, 80; 2003 a. 111, 270; 2005 a. 25, 314; 2007 a. 20 s. 9121 (6) (a); 2009 a. 106; 2009 a. 149 s. 3; 2011 a. 32 ss. 110, 130 to 153; 2011 a. 190; 2013 a. 124, 358; s. 13.92 (2) (i).

SECTION 2. 20.165 (1) (hg) of the statutes is amended to read:

20.165 (1) (hg) *General program operations; medical examining board; prescription drug monitoring program.* Biennially, the amounts in the schedule for the licensing, rule-making, and regulatory functions of the medical examining board and the affiliated credentialing boards attached to the medical examining board, except for preparing, administering, and grading examinations; and for the pharmacy examining controlled substances board's operation of the prescription

1 drug monitoring program under s. ~~450.19~~ 961.385. Ninety percent of all moneys
2 received for issuing and renewing credentials under ch. 448 shall be credited to this
3 appropriation.

History: 1971 c. 125; 1973 c. 90, 156, 333; 1975 c. 39; 1977 c. 29, 400, 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20; 1983 a. 27; 1985 a. 29; 1989 a. 31, 307; 1991 a. 167, 269, 315; 1993 a. 16, 102, ~~400~~; 1995 a. 27, 461; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2007 a. 20; 2009 a. 28, 111; 2011 a. 32 ss. 447 to 476, 478, 480 to 484, 486 to 488, 494 to 495; 2011 a. 146; 2013 a. 20, 358.

4 **SECTION 3.** 146.82 (1) of the statutes is amended to read:

5 146.82 (1) CONFIDENTIALITY. All patient health care records shall remain
6 confidential. Patient health care records may be released only to the persons
7 designated in this section or to other persons with the informed consent of the patient
8 or of a person authorized by the patient. This subsection does not prohibit reports
9 made in compliance with s. 253.12 (2), 255.40, or 979.01; records generated or
10 disclosed pursuant to rules promulgated under s. ~~450.19~~ 961.385; testimony
11 authorized under s. 905.04 (4) (h); or releases made for purposes of health care
12 operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164,
13 subpart E.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45, 106, 108, 130; 2009 a. 28, 276, 362; 2011 a. 32, 161; 2013 a. 20, 334.

14 **SECTION 4.** 450.11 (1b) (bm) of the statutes is amended to read:

15 450.11 (1b) (bm) A pharmacist or other person dispensing or delivering a drug
16 shall legibly record the name on each identification card presented under par. (b) to
17 the pharmacist or other person, and the name of each person to whom a drug is
18 dispensed or delivered subject to par. (e) 2., and shall maintain that record for a time
19 established by the board by rule or, for a record that is subject to s. ~~450.19~~ 961.385,
20 until the name is delivered to the controlled substances board under s. ~~450.19~~
21 961.385, whichever is sooner.

History: 1985 a. 146; 1997 a. 27, 175, 283; 2001 a. ~~109~~; 2005 a. 187, 195, 196, 242; 2007 a. 97; 2009 a. 113, 280; 2011 a. 159, 161; 2013 a. 199, 200, 239; s. 13.92 (2) (i).

22 **SECTION 5.** 450.19 of the statutes is renumbered 961.385, and 961.385 (2) (a)

23 3., (c) and (f) and (2m) (b), as renumbered, are amended to read:

1 **961.385 (2)** (a) 3. The prescription order is for a monitored prescription drug
2 that is a substance listed in the schedule in s. 961.22 and is not a narcotic drug, as
3 defined in s. 961.01 (15), and the prescription order is for a number of doses that is
4 intended to last the patient 7 days or less.

5 (c) Specify the persons to whom a record may be disclosed and the
6 circumstances under which the disclosure may occur. The rule promulgated under
7 this paragraph shall permit the board to share a record generated by the program
8 with relevant boards or agencies of this state and relevant agencies of other states.

9 (f) ~~Specify the~~ Refer to the appropriate board for discipline for failure a
10 pharmacist, pharmacy, or practitioner that fails to comply with rules promulgated
11 under this subsection.

12 **(2m)** (b) After consultation with representatives of licensed pharmacists and
13 pharmacies, and subject to the approval of the secretary of safety and professional
14 services, the board may delay the requirement that a record delivered to the board
15 contain the name recorded under s. 450.11 (1b) (bm) for an additional period beyond
16 the date specified in par. (a).

17 History: 2009 a. 362; 2011 a. 260 s. 81; 2013 a. 3, 20, 124, 199; s. 13.92 (2) (i).

18 **SECTION 9138. Nonstatutory provisions; Safety and Professional**
19 **Services.**

20 (1) TRANSFER OF PRESCRIPTION DRUG MONITORING PROGRAM.

21 (a) *Assets and liabilities.* The assets and liabilities of the pharmacy examining
22 board that the secretary of safety and professional services determines to be
23 primarily related to the prescription drug monitoring program become the assets
24 and liabilities of the controlled substances board on the effective date of this
paragraph.

1 (b) *Tangible personal property.* On the effective date of this paragraph, all
2 tangible personal property, including records, of the pharmacy examining board that
3 the secretary of safety and professional services determines to be primarily related
4 to the prescription drug monitoring program is transferred to the controlled
5 substances board.

6 (c) *Contracts.* All contracts that were entered into by the pharmacy examining
7 board that the secretary of safety and professional services determines to be
8 primarily related to the prescription drug monitoring program, and that are in effect
9 on the effective date of this paragraph, remain in effect and are transferred to the
10 controlled substances board. The controlled substances board shall carry out any
11 obligations under such a contract until the contract is modified or rescinded by the
12 controlled substances board to the extent allowed under the contract.

13 (d) *Rules and orders.* All rules promulgated, and all orders issued, by the
14 pharmacy examining board that the secretary of safety and professional services
15 determines to be primarily related to the prescription drug monitoring program, and
16 that are in effect on the effective date of this paragraph, remain in effect until their
17 specified expiration date or until ^yamended, rescinded, or repealed by the controlled
18 substances board. *modified,*

19 (e) *Pending matters.* Any matter pending with the pharmacy examining board
20 that the secretary of safety and professional services determines to be primarily
21 related to the prescription drug monitoring program is transferred to the controlled
22 substances board, and all materials submitted to or actions taken by the pharmacy
23 examining board with respect to the pending matter are considered as having been
24 submitted to or taken by the controlled substances board.

25

(END)

DNote

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0433/P1dn

MPG:j:....

SAC

-date-

Andy:

Please review this draft carefully to ensure that it is consistent with the intent.

I did not include any language specifying that failure to deliver records under the PDMP is a failure to comply with the PDMP. That is already true under current law. Let me know if something else is intended by that language in the drafting instructions that I may be missing.

I also did not include the language from the drafting instructions that it is a failure to comply with the PDMP if there is a "failure to deliver records when a prescriber, dispenser or patient may be engaged in critically dangerous behavior." I have the following comments and questions about that language:

1. The PDMP requires a record to be generated after a monitored prescription drug is dispensed to a patient at a pharmacy or by a practitioner. There is no requirement that a record be generated based on a person's observed behavior. Is the intent to create such a requirement under the PDMP?
2. It is not clear to me what might constitute engaging in a "critically dangerous behavior," especially for a practitioner or pharmacist. Can we define that behavior?
3. In the case of a practitioner dispensing a prescription drug to a patient in the practitioner's office, who is to make a record of such behavior and deliver the record to the PDMP? In the case of a pharmacist engaging in such behavior, is it the pharmacy that must report it?
4. If a practitioner or a pharmacist observes such behavior in a patient, might he or she have some obligation under current law concerning that behavior?
5. Is the idea that the practitioner or pharmacist must refuse to dispense the monitored prescription drug to a patient and report such behavior under the PDMP when such behavior is observed? Or, is the intent that the practitioner or pharmacist dispense the monitored prescription drug to the patient but include a description of any such behavior in the record delivered under the PDMP?

If you want to discuss my questions, please do not hesitate to contact me.

Thank you.

Michael Gallagher
Legislative Attorney
(608) 267-7511
michael.gallagher@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
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LRB-0433/P1dn
MPG:sac:rs

November 7, 2014

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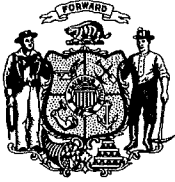
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Legislative Attorney
(608) 267-7511
michael.gallagher@legis.wisconsin.gov

11/13 T/C w/ Andy Potts. - 0433

- Idea is to authorize CSB to disclose records to law enforcement and report "suspicious or critically-dangerous behavior." CSB will define what that is in the rules.



In: 11/18

State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-0433/P1

MPG:sac:rs

stays

DOA:.....Potts, BB0148 - Move prescription drug monitoring program to controlled substances board.

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

Insert

Comp PB 11/20
1/P2

1 AN ACT *do not gen*; relating to: the budget.

**Analysis by the Legislative Reference Bureau
SAFETY AND PROFESSIONAL SERVICES**

PROFESSIONAL LICENSURE

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This bill transfers the PDMP to the Controlled Substances Board, which, like the Pharmacy Examining Board, is attached to DSPS.

Also, under current law, the membership of the Controlled Substances Board consists of all of the following six members:

1. The attorney general or his or her designee.
2. The secretary of health services or his or her designee.
3. The secretary of agriculture, trade and consumer protection or his or her designee.

(PEB)

PEB

(CSB)

(CSB)

PEB
= = =

- 4. The chairperson of the Pharmacy Examining Board.
- 5. One psychiatrist for a three-year term.
- 6. One pharmacologist for a three-year term.

The bill eliminates the psychiatrist member from that list but adds all of the following, for a total of nine members:

- 1. The secretary of safety and professional services or his or her designee.
- 2. The chairperson of the Medical Examining Board or his or her designee.
- 3. The chairperson of the Dentistry Examining Board or his or her designee.
- 4. The chairperson of the Board of Nursing or his or her designee.

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 5 trade and consumer protection, and the secretary of safety and professional services,
 6 or their designees; the chairperson of the pharmacy examining board, the
 7 chairperson of the medical examining board, the chairperson of the dentistry
 8 examining board, and the chairperson of the board of nursing, or a designee; and one
 9 psychiatrist their designees; and one pharmacologist appointed for a 3-year terms
 10 term.

11 SECTION 2. 20.165 (1) (hg) of the statutes is amended to read:

12 20.165 (1) (hg) *General program operations; medical examining board;*
 13 *prescription drug monitoring program.* Biennially, the amounts in the schedule for
 14 the licensing, rule-making, and regulatory functions of the medical examining board
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 16 except for preparing, administering, and grading examinations; and for the
 17 pharmacy-examining controlled substances board's operation of the prescription

1 drug monitoring program under s. ~~450.19~~ 961.385. Ninety percent of all moneys
2 received for issuing and renewing credentials under ch. 448 shall be credited to this
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6 confidential. Patient health care records may be released only to the persons
7 designated in this section or to other persons with the informed consent of the patient
8 or of a person authorized by the patient. This subsection does not prohibit reports
9 made in compliance with s. 253.12 (2), 255.40, or 979.01; records generated or
10 disclosed pursuant to rules promulgated under s. ~~450.19~~ 961.385; testimony
11 authorized under s. 905.04 (4) (h); or releases made for purposes of health care
12 operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164,
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14 **SECTION 4.** 450.11 (1b) (bm) of the statutes is amended to read:

15 450.11 (1b) (bm) A pharmacist or other person dispensing or delivering a drug
16 shall legibly record the name on each identification card presented under par. (b) to
17 the pharmacist or other person, and the name of each person to whom a drug is
18 dispensed or delivered subject to par. (e) 2., and shall maintain that record for a time
19 established by the board by rule or, for a record that is subject to s. ~~450.19~~ 961.385,
20 until the name is delivered to the controlled substances board under s. ~~450.19~~
21 961.385, whichever is sooner.

22 **SECTION 5.** 450.19 of the statutes is renumbered 961.385, and 961.385 (2) (a)
23 3., (c) and (f) and (2m) (b), as renumbered, are amended to read:

24 961.385 (2) (a) 3. The prescription order is for a monitored prescription drug
25 that is a substance listed in the schedule in s. 961.22 and is not a narcotic drug, as

1 defined in s. 961.01 (15), and the prescription order is for a number of doses that is
2 intended to last the patient 7 days or less.

3 (c) Specify the persons to whom a record may be disclosed and the
4 circumstances under which the disclosure may occur. The rule promulgated under
5 this paragraph shall permit the board to share a record generated by the program
6 with relevant boards or agencies of this state and relevant agencies of other states.

7 (f) ~~Specify the~~ Refer to the appropriate board for discipline for failure a
8 pharmacist, pharmacy, or practitioner that fails to comply with rules promulgated
9 under this subsection.

10 (2m) (b) After consultation with representatives of licensed pharmacists and
11 pharmacies, and subject to the approval of the secretary of safety and professional
12 services, the board may delay the requirement that a record delivered to the board
13 contain the name recorded under s. 450.11 (1b) (bm) for an additional period beyond
14 the date specified in par. (a).

15 **SECTION 9138. Nonstatutory provisions; Safety and Professional**
16 **Services.**

17 (1) TRANSFER OF PRESCRIPTION DRUG MONITORING PROGRAM.

18 (a) *Assets and liabilities.* The assets and liabilities of the pharmacy examining
19 board that the secretary of safety and professional services determines to be
20 primarily related to the prescription drug monitoring program become the assets
21 and liabilities of the controlled substances board on the effective date of this
22 paragraph.

23 (b) *Tangible personal property.* On the effective date of this paragraph, all
24 tangible personal property, including records, of the pharmacy examining board that
25 the secretary of safety and professional services determines to be primarily related

Insert 4-2

1 to the prescription drug monitoring program is transferred to the controlled
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4 board that the secretary of safety and professional services determines to be
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6 on the effective date of this paragraph, remain in effect and are transferred to the
7 controlled substances board. The controlled substances board shall carry out any
8 obligations under such a contract until the contract is modified or rescinded by the
9 controlled substances board to the extent allowed under the contract.

10 (d) *Rules and orders.* All rules promulgated, and all orders issued, by the
11 pharmacy examining board that the secretary of safety and professional services
12 determines to be primarily related to the prescription drug monitoring program, and
13 that are in effect on the effective date of this paragraph, remain in effect until their
14 specified expiration date or until modified, amended, rescinded, or repealed by the
15 controlled substances board.

16 (e) *Pending matters.* Any matter pending with the pharmacy examining board
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18 related to the prescription drug monitoring program is transferred to the controlled
19 substances board, and all materials submitted to or actions taken by the pharmacy
20 examining board with respect to the pending matter are considered as having been
21 submitted to or taken by the controlled substances board.

22

(END)

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0433/P2ins
MPG:sac:rs

1 INSERT A

Also under current law, the rules promulgated under the PDMP must permit the PEB to disclose a record generated under the PDMP to relevant state and local agencies. The bill specifies that those agencies include law enforcement and that the circumstances under which the CSB, under the bill, may disclose a record generated under the PDMP include circumstances indicating suspicious or critically-dangerous behavior of a pharmacy, pharmacist, practitioner, or patient. The bill requires the CSB to define "suspicious or critically-dangerous behavior" for purposes of the PDMP.

Current law further requires the PEB to specify by rule the discipline for failure to comply with the PDMP. Under the bill, the rules promulgated by the CSB must permit the board to refer to the appropriate board for discipline, or the appropriate law enforcement agency for investigation and possible prosecutions, a pharmacist, pharmacy, or practitioner that fails to comply with the PDMP, including by failing to generate a record in compliance with the PDMP.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

2 END INSERT A

3 INSERT 4-2

(c) Specify the persons to whom a record may be disclosed and the circumstances under which the disclosure may occur. The rule promulgated under this paragraph shall permit the board to share disclose a record generated by the program with to relevant state and local boards and agencies, including law enforcement, and relevant agencies of other states, including under circumstances indicating suspicious or critically-dangerous behavior of a pharmacy, pharmacist, practitioner, or patient. The board shall define what constitutes suspicious or critically-dangerous behavior for purposes of the rule promulgated under this paragraph.

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- 1
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- 3

promulgated under this subsection, including by failing to generate a record in compliance with the program.

END INSERT 4-2

that is required by



LRB-0433/P2
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DOA:.....Potts, BB0148 – Move prescription drug monitoring program to controlled substances board.

FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION

1P3

S.A.
Xref

Don't Gen.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

SAFETY AND PROFESSIONAL SERVICES

PROFESSIONAL LICENSURE

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This bill transfers the PDMP to the Controlled Substances Board (CSB), which, like the PEB, is attached to DSPS.

Also, under current law, the membership of the CSB consists of all of the following six members:

1. The attorney general or his or her designee.
2. The secretary of health services or his or her designee.
3. The secretary of agriculture, trade and consumer protection or his or her designee.

to the membership of the CSB

- 4. The chairperson of the PEB.
- 5. One psychiatrist for a three-year term.
- 6. One pharmacologist for a three-year term.

The bill eliminates the psychiatrist member from that list but adds all of the following, for a total of nine members:

- 1. The secretary of safety and professional services or his or her designee.
- 2. The chairperson of the Medical Examining Board or his or her designee.
- 3. The chairperson of the Dentistry Examining Board or his or her designee.
- 4. The chairperson of the Board of Nursing or his or her designee.

Also under current law, the rules promulgated under the PDMP must permit the PEB to disclose a record generated under the PDMP to relevant state and local agencies. The bill specifies that those agencies include law enforcement and that the circumstances under which the CSB, under the bill, may disclose a record generated under the PDMP include circumstances indicating suspicious or critically dangerous conduct or practices of a pharmacy, pharmacist, practitioner, or patient. The bill requires the CSB to define "suspicious or critically dangerous behavior" for purposes of the PDMP.

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1 SECTION 1. 15.405 (5g) of the statutes is amended to read:

2 15.405 (5g) CONTROLLED SUBSTANCES BOARD. There is created in the department
 3 of safety and professional services a controlled substances board consisting of the
 4 attorney general, the secretary of health services, and the secretary of agriculture,
 5 trade and consumer protection, and the secretary of safety and professional services,
 6 or their designees; the chairperson of the pharmacy examining board, the
 7 chairperson of the medical examining board, the chairperson of the dentistry
 8 examining board, and the chairperson of the board of nursing, or a designee; and one

*
 1
 2
 3
 *
 Conduct or practices

Plain

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2 dispensed or delivered subject to par. (e) 2., and shall maintain that record for a time
3 established by the board by rule or, for a record that is subject to s. 450.19 961.385,
4 until the name is delivered to the controlled substances board under s. 450.19
5 961.385, whichever is sooner.

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25 required by the program.

1 **(2m)** (b) After consultation with representatives of licensed pharmacists and
2 pharmacies, and subject to the approval of the secretary of safety and professional
3 services, the board may delay the requirement that a record delivered to the board
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Gallagher, Michael

From: Potts, Andrew R - DOA <Andrew.Potts@wisconsin.gov>
Sent: Thursday, January 15, 2015 12:09 PM
To: Gallagher, Michael
Subject: PDMP
Attachments: 20150115115653372.pdf

DSPS comments.

Andrew R. Potts

*Executive Budget and Policy Analyst
Wisconsin Department of Administration
State Budget Office
(608) 267-0370*

NO language required.

Non-Statutory Language Regarding PDMP Staff for Budget Bill

Section 9138.

(f) Employee assignments. On the effective date of this paragraph, all positions, and the incumbent employees who hold those positions, in the department performing duties that are primarily related to the prescription drug monitoring program, as determined by the secretary of safety and professional services, are assigned duties related to the controlled substances board. The secretary may employ, assign and reassign such staff as are required by the controlled substances board in the performance of its functions.

Page 5

Line 20 after the word "board" insert or by DSPS on behalf of the Pharmacy Examining Board

DRAFT

~~SECRET~~



1-23 Today, Thanks
State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-0433/P3
MPG:sac&emw/rs

DOA:.....Potts, BB0148 – Move prescription drug monitoring program to controlled substances board.

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

Handwritten scribbles
EIF
1/24

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
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PROFESSIONAL LICENSURE

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^ or by the department of safety and professional services
on behalf of the pharmacy examining board?

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10 (END)



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0433/P4
MPG:emw&kjf:jm

33

DOA:.....Potts, BB0148 - Move prescription drug monitoring program to controlled substances board.

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

Handwritten notes in ovals: "Potts", "BB0148", and "Don't Gen".

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

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14 or of a person authorized by the patient. This subsection does not prohibit reports
15 made in compliance with s. 253.12 (2), 255.40, or 979.01; records generated or
16 disclosed pursuant to rules promulgated under s. ~~450.19~~ 961.385; testimony
17 authorized under s. 905.04 (4) (h); or releases made for purposes of health care
18 operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164,
19 subpart E.

20 **SECTION 4.** 450.11 (1b) (bm) of the statutes is amended to read:

21 450.11 (1b) (bm) A pharmacist or other person dispensing or delivering a drug
22 shall legibly record the name on each identification card presented under par. (b) to
23 the pharmacist or other person, and the name of each person to whom a drug is
24 dispensed or delivered subject to par. (e) 2., and shall maintain that record for a time
25 established by the board by rule or, for a record that is subject to s. ~~450.19~~ 961.385,

Handwritten notes: 4-4, 2-5, 3

Handwritten notes: (1) (9r) 1

1 until the name is delivered to the controlled substances board under s. 450.19
2 961.385, whichever is sooner.

3 SECTION 5. 450.19 of the statutes is renumbered 961.385, and 961.385 (2) (a)
4 3., (c) and (f) and (2m) (b), as renumbered, are amended to read:

5 961.385 (2) (a) 3. The prescription order is for a monitored prescription drug
6 that is a substance listed in the schedule in s. 961.22 and is not a narcotic drug, as
7 defined in s. 961.01 (15), and the prescription order is for a number of doses that is
8 intended to last the patient 7 days or less.

9 (c) Specify the persons to whom a record may be disclosed and the
10 circumstances under which the disclosure may occur. The rule promulgated under
11 this paragraph shall permit the board to ~~share~~ disclose a record generated by the
12 program ~~with~~ to relevant state and local boards and agencies, including law
13 enforcement, and relevant agencies of other states, including under circumstances
14 indicating suspicious or critically dangerous conduct or practices of a pharmacy,
15 pharmacist, practitioner, or patient. The board shall define what constitutes
16 suspicious or critically dangerous conduct or practices for purposes of the rule
17 promulgated under this paragraph.

18 (f) ~~Specify~~ Permit the board to refer to the appropriate board for discipline for
19 failure, or the appropriate law enforcement agency for investigation and possible
20 prosecution, a pharmacist, pharmacy, or practitioner that fails to comply with rules
21 promulgated under this subsection, including by failure to generate a record that is
22 required by the program.

23 (2m) (b) After consultation with representatives of licensed pharmacists and
24 pharmacies, and subject to the approval of the secretary of safety and professional
25 services, the board may delay the requirement that a record delivered to the board

1 contain the name recorded under s. 450.11 (1b) (bm) for an additional period beyond
2 the date specified in par. (a).

3 **SECTION 9138. Nonstatutory provisions; Safety and Professional**
4 **Services.**

5 (1) TRANSFER OF PRESCRIPTION DRUG MONITORING PROGRAM.

6 (a) *Assets and liabilities.* The assets and liabilities of the pharmacy examining
7 board that the secretary of safety and professional services determines to be
8 primarily related to the prescription drug monitoring program become the assets
9 and liabilities of the controlled substances board on the effective date of this
10 paragraph.

11 (b) *Tangible personal property.* On the effective date of this paragraph, all
12 tangible personal property, including records, of the pharmacy examining board that
13 the secretary of safety and professional services determines to be primarily related
14 to the prescription drug monitoring program is transferred to the controlled
15 substances board.

16 (c) *Contracts.* All contracts that were entered into by the pharmacy examining
17 board, or by the department of safety and professional services on behalf of the
18 pharmacy examining board, that the secretary of safety and professional services
19 determines to be primarily related to the prescription drug monitoring program, and
20 that are in effect on the effective date of this paragraph, remain in effect and are
21 transferred to the controlled substances board. The controlled substances board
22 shall carry out any obligations under such a contract until the contract is modified
23 or rescinded by the controlled substances board to the extent allowed under the
24 contract.

1 (d) *Rules and orders.* All rules promulgated, and all orders issued, by the
2 pharmacy examining board that the secretary of safety and professional services
3 determines to be primarily related to the prescription drug monitoring program, and
4 that are in effect on the effective date of this paragraph, remain in effect until their
5 specified expiration date or until modified, amended, rescinded, or repealed by the
6 controlled substances board.

7 (e) *Pending matters.* Any matter pending with the pharmacy examining board
8 that the secretary of safety and professional services determines to be primarily
9 related to the prescription drug monitoring program is transferred to the controlled
10 substances board, and all materials submitted to or actions taken by the pharmacy
11 examining board with respect to the pending matter are considered as having been
12 submitted to or taken by the controlled substances board.

13

(END)

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0433/P5ins
MPG:.....

1 INSERT 4-4

2 961.385 (1) (ar) "Practitioner" has the meaning given in s. 450.01 (17) but does
3 not include a veterinarian licensed under ch. ~~453~~ 89. ✓ strike

****NOTE: This is reconciled s. 450.19 (1) (ar). This SECTION has been affected by
drafts with the following LRB numbers: -0433/P5 and -1053/P3. ✓
- recall

4 END INSERT 4-4

4 2

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

15-0433/P5dn

MPG:....*sf*

Date

✓ ✓
This draft reconciles LRB-0433 and LRB-1053. Both of these drafts should continue to appear in the compiled bill.

Michael Gallagher
Legislative Attorney
(608) 267-7511
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

15-0433/P5dn
MPG:kjf:jm

January 30, 2015

This draft reconciles LRB-0433 and LRB-1053. Both of these drafts should continue to appear in the compiled bill.

Michael Gallagher
Legislative Attorney
(608) 267-7511
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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0433/P5
MPG:emw&kjf:jm

DOA:.....Potts, BB0148 – Move prescription drug monitoring program to controlled substances board.

FOR 2015-2017 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

SAFETY AND PROFESSIONAL SERVICES

PROFESSIONAL LICENSURE

Current law requires the Pharmacy Examining Board (PEB) to establish by rule and administer a prescription drug monitoring program (PDMP). The PDMP requires pharmacies and physicians or other practitioners to generate a record documenting each dispensing of a prescription drug by the pharmacy or practitioner that is covered by the PDMP, generally a controlled substance or other drug the PEB identifies as having a substantial potential for abuse. Among other requirements, the pharmacy or practitioner must deliver records generated under the PDMP to the PEB.

This bill transfers the PDMP to the Controlled Substances Board (CSB), which, like the PEB, is attached to DSPS.

Also, under current law, the membership of the CSB consists of all of the following six members:

1. The attorney general or his or her designee.
2. The secretary of health services or his or her designee.
3. The secretary of agriculture, trade and consumer protection or his or her designee.

4. The chairperson of the PEB.
5. One psychiatrist for a three-year term.
6. One pharmacologist for a three-year term.

The bill adds all of the following to the membership of the CSB, for a total of nine members:

1. The chairperson of the Medical Examining Board or his or her designee.
2. The chairperson of the Dentistry Examining Board or his or her designee.
3. The chairperson of the Board of Nursing or his or her designee.

Also under current law, the rules promulgated under the PDMP must permit the PEB to disclose a record generated under the PDMP to relevant state and local agencies. The bill specifies that those agencies include law enforcement and that the circumstances under which the CSB, under the bill, may disclose a record generated under the PDMP include circumstances indicating suspicious or critically dangerous conduct or practices of a pharmacy, pharmacist, practitioner, or patient. The bill requires the CSB to define “suspicious or critically dangerous conduct or practices” for purposes of the PDMP.

Current law further requires the PEB to specify by rule the discipline for failure to comply with the PDMP. Under the bill, the rules promulgated by the CSB must permit the board to refer to the appropriate board for discipline, or the appropriate law enforcement agency for investigation and possible prosecution, a pharmacist, pharmacy, or practitioner that fails to comply with the PDMP, including by failure to generate a record that is required by the PDMP.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.405 (5g) of the statutes is amended to read:

2 15.405 (5g) CONTROLLED SUBSTANCES BOARD. There is created in the department
3 of safety and professional services a controlled substances board consisting of the
4 attorney general, the secretary of health services, and the secretary of agriculture,
5 trade and consumer protection, or their designees; the chairperson of the pharmacy
6 examining board, the chairperson of the medical examining board, the chairperson
7 of the dentistry examining board, and the chairperson of the board of nursing, or a
8 designee; and one psychiatrist and one pharmacologist appointed for 3-year terms.

9 **SECTION 2.** 20.165 (1) (hg) of the statutes is amended to read:

1 20.165 (1) (hg) *General program operations; medical examining board;*
2 *prescription drug monitoring program.* Biennially, the amounts in the schedule for
3 the licensing, rule-making, and regulatory functions of the medical examining board
4 and the affiliated credentialing boards attached to the medical examining board,
5 except for preparing, administering, and grading examinations; and for the
6 ~~pharmacy examining~~ controlled substances board's operation of the prescription
7 drug monitoring program under s. ~~450.19~~ 961.385. Ninety percent of all moneys
8 received for issuing and renewing credentials under ch. 448 shall be credited to this
9 appropriation.

10 **SECTION 3.** 146.82 (1) of the statutes is amended to read:

11 146.82 (1) **CONFIDENTIALITY.** All patient health care records shall remain
12 confidential. Patient health care records may be released only to the persons
13 designated in this section or to other persons with the informed consent of the patient
14 or of a person authorized by the patient. This subsection does not prohibit reports
15 made in compliance with s. 253.12 (2), 255.40, or 979.01; records generated or
16 disclosed pursuant to rules promulgated under s. ~~450.19~~ 961.385; testimony
17 authorized under s. 905.04 (4) (h); or releases made for purposes of health care
18 operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164,
19 subpart E.

20 **SECTION 4.** 450.11 (1b) (bm) of the statutes is amended to read:

21 450.11 (1b) (bm) A pharmacist or other person dispensing or delivering a drug
22 shall legibly record the name on each identification card presented under par. (b) to
23 the pharmacist or other person, and the name of each person to whom a drug is
24 dispensed or delivered subject to par. (e) 2., and shall maintain that record for a time
25 established by the board by rule or, for a record that is subject to s. ~~450.19~~ 961.385,

1 until the name is delivered to the controlled substances board under s. 450.19
2 961.385, whichever is sooner.

3 SECTION 5. 450.19 of the statutes is renumbered 961.385, and 961.385 (1) (ar),
4 (2) (a) 3., (c) and (f) and (2m) (b), as renumbered, are amended to read:

5 961.385 (1) (ar) “Practitioner” has the meaning given in s. 450.01 (17) but does
6 not include a veterinarian licensed under ch. 453 89.

****NOTE: This is reconciled s. 450.19 (1) (ar). This SECTION has been affected by
drafts with the following LRB numbers: -0433/P4 and -1053/P2.

7 961.385 (2) (a) 3. The prescription order is for a monitored prescription drug
8 that is a substance listed in the schedule in s. 961.22 and is not a narcotic drug, as
9 defined in s. 961.01 (15), and the prescription order is for a number of doses that is
10 intended to last the patient 7 days or less.

11 (c) Specify the persons to whom a record may be disclosed and the
12 circumstances under which the disclosure may occur. The rule promulgated under
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14 program ~~with~~ to relevant state and local boards and agencies, including law
15 enforcement, and relevant agencies of other states, including under circumstances
16 indicating suspicious or critically dangerous conduct or practices of a pharmacy,
17 pharmacist, practitioner, or patient. The board shall define what constitutes
18 suspicious or critically dangerous conduct or practices for purposes of the rule
19 promulgated under this paragraph.

20 (f) ~~Specify~~ Permit the board to refer to the appropriate board for discipline for
21 failure, or the appropriate law enforcement agency for investigation and possible
22 prosecution, a pharmacist, pharmacy, or practitioner that fails to comply with rules

1 promulgated under this subsection, including by failure to generate a record that is
2 required by the program.

3 (2m) (b) After consultation with representatives of licensed pharmacists and
4 pharmacies, and subject to the approval of the secretary of safety and professional
5 services, the board may delay the requirement that a record delivered to the board
6 contain the name recorded under s. 450.11 (1b) (bm) for an additional period beyond
7 the date specified in par. (a).

8 **SECTION 9138. Nonstatutory provisions; Safety and Professional**
9 **Services.**

10 (1) TRANSFER OF PRESCRIPTION DRUG MONITORING PROGRAM.

11 (a) *Assets and liabilities.* The assets and liabilities of the pharmacy examining
12 board that the secretary of safety and professional services determines to be
13 primarily related to the prescription drug monitoring program become the assets
14 and liabilities of the controlled substances board on the effective date of this
15 paragraph.

16 (b) *Tangible personal property.* On the effective date of this paragraph, all
17 tangible personal property, including records, of the pharmacy examining board that
18 the secretary of safety and professional services determines to be primarily related
19 to the prescription drug monitoring program is transferred to the controlled
20 substances board.

21 (c) *Contracts.* All contracts that were entered into by the pharmacy examining
22 board, or by the department of safety and professional services on behalf of the
23 pharmacy examining board, that the secretary of safety and professional services
24 determines to be primarily related to the prescription drug monitoring program, and
25 that are in effect on the effective date of this paragraph, remain in effect and are

1 transferred to the controlled substances board. The controlled substances board
2 shall carry out any obligations under such a contract until the contract is modified
3 or rescinded by the controlled substances board to the extent allowed under the
4 contract.

5 (d) *Rules and orders.* All rules promulgated, and all orders issued, by the
6 pharmacy examining board that the secretary of safety and professional services
7 determines to be primarily related to the prescription drug monitoring program, and
8 that are in effect on the effective date of this paragraph, remain in effect until their
9 specified expiration date or until modified, amended, rescinded, or repealed by the
10 controlled substances board.

11 (e) *Pending matters.* Any matter pending with the pharmacy examining board
12 that the secretary of safety and professional services determines to be primarily
13 related to the prescription drug monitoring program is transferred to the controlled
14 substances board, and all materials submitted to or actions taken by the pharmacy
15 examining board with respect to the pending matter are considered as having been
16 submitted to or taken by the controlled substances board.

17 (END)