

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 811 (Delegate Vogel, *et al.*)
Health and Government Operations

Hospitals - Overdoses - Testing for Fentanyl

This bill requires a hospital emergency department treating an individual for a known or suspected drug overdose to conduct a rapid urine drug test on the individual for the presence of fentanyl if a treating health care provider requests a toxicology screen on the individual. A hospital that does not have the equipment to conduct a rapid urine drug test is exempt from this requirement. The bill does not affect the State’s “Good Samaritan Law.”

Fiscal Summary

State Effect: The bill is not anticipated to materially affect governmental operations or finances.

Local Effect: The bill is not anticipated to materially affect local governmental operations or finances.

Small Business Effect: None.

Analysis

Current Law: Controlled dangerous substances (CDS) are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

Unless specifically exempted, or listed on another schedule, specified opium derivatives, including their salts, isomers, and salts of isomers, whenever their existence is possible within the specific chemical designation, are deemed Schedule I CDS. Heroin is an opium derivative and is listed as a Schedule I CDS. Fentanyl is a Schedule II synthetic opioid.

Chapter 401 of 2014, the “Good Samaritan Law,” established that a person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person experiencing a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for specified violations if the evidence for the criminal prosecution was obtained solely as a result of the person’s seeking, providing, or assisting with the provision of medical assistance. Additionally, a person who experiences a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for certain violations if the evidence for the criminal prosecution was obtained solely as a result of another person’s seeking medical assistance. The law also establishes that the act of seeking, providing, or assisting with the provision of medical assistance for another person may be used as a mitigating factor in a criminal prosecution.

Additional Comments: Most rapid urine drug tests provided in emergency departments screen for five substances: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). Results from at least one field study conducted in Baltimore-area hospitals and published by the U.S. Centers for Disease Control and Prevention indicated that regular fentanyl testing in emergency departments addressed a gap in patient care, especially for those patients who tested negative for opiates but were nonetheless positive for fentanyl.

Opioid overdose and use continue to be an epidemic in the United States and in Maryland. The Commonwealth Fund’s *2022 Scorecard on State Health System Performance* ranks Maryland as forty-fifth among states for drug overdose deaths per 100,000 population. The [Maryland Overdose Data Dashboard](#) published by the Opioid Operational Command Center indicates that, for the year ending October 2022, there were 8,610 non-fatal opioid-related hospital emergency department visits and 2,454 fatal overdoses resulting from all substances (including fentanyl, cocaine, alcohol, prescription opioids, heroin, methamphetamines, benzodiazepines, and PCP) across Maryland. Approximately 82% (or 2,001) overdose deaths were attributable to fentanyl.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 914 (Senators Ellis and Rosapepe) - Rules.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; U.S. Centers for Disease Control and Prevention; The Commonwealth Fund; Department of Legislative Services

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