

ALASKA STATE LEGISLATURE



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SENATOR LYDA GREEN SENATE DISTRICT G

January 25, 2008

To All Those Interested,

This letter is written in response to general concerns I've received in the past week regarding Senate Bill 196 "The Prescription Drug Monitoring Program" and database.

Additional Information Gathering Requirements

Concerns regarding collecting information of the individual who actually picks up the prescription is certainly up for discussion when the bill is heard in committee. The requirement to include this information was added under recommendation by other states who have implemented a PDMP. Other states have found great success in reducing prescription drug diversion by collecting information on the person who picks up the prescription.

I am aware that there may be concerns by individuals such as home health aides, respite workers and family members who are assisting home-bound individuals. I do not want to create a sense of fear or privacy invasion for those who are legitimately trying to be helpful. I also do not want to increase the workload for pharmacies.

Continued Funding

Concerns are certainly valid when it comes to stable funding for state and federal programs. We are confident that the funding for Alaska's Prescription Drug Monitoring Program would be paid for out of the Harold Rogers federal grant and that Alaska would soon realize significant savings in the Medicaid program, by health insurers and for investigation costs. The Harold Rogers federal grant has been available for seven years.

The first phase of a PDMP is eligible to receive a \$50,000 federal grant. The Department of Commerce, Community and Economic Development has already received phase one grant funding and has used the grant for the professional licensing investigator to learn more about PDMP for Alaska.

The second phase is implementing a PDMP and Alaska can apply for a \$400,000 Harold Rogers federal grant. The cost of managing a PDMP is estimated to be less than \$300,000 annually for Alaska while the first year may be more expensive. The program cost will include the computer programming and data storage and security costs with no cost incurred by the dispensers or other data users. We believe that the savings and improved health care for Alaskans would fully support continued state funding in the event federal

funds were no longer available. We do not anticipate any costs being passed on to the system users. A fiscal note will accompany the legislation.

Initial year costs are typically greater than continuing years. We anticipate that purchasing software licenses and the initial contracts will be more expensive in the first year. Program maintenance costs should not exceed \$300,000. Costs to implement and manage this program in the first year are approximately:

\$125,000	One FTE range 18 investigator
\$10,000	Travel
\$250,000	Contractual (computer contracts plus office misc.)
\$5,000	Supplies
\$10,000	<u>Lease / Capital Outlay</u>
\$400,000	Total

Additional Provision Requested to be Considered:

I have been asked about protection of doctors and pharmacists if they do not use the database for every or any patient. I am looking into language that may be considered regarding liability for a doctor who may not use the database in every circumstance. Similar language was included in PDMPs for the states of Ohio, Oklahoma and Alabama.

“Nothing shall require or obligate a dispenser or prescriber to access or check the information in the drug monitoring program prior to dispensing, prescribing, or administering medications or as part of their professional practice. Dispensers and prescribers shall not be liable to any person for any claim of damages as a result of accessing or failing to access the information in the drug monitoring program and no lawsuit may be predicated thereon.”

Tribal and Military Health Agency Reporting:

Although we would like tribal and military health entities to report, they are exempt from state law through the Indian Health Service and Veterans’ Administration respectively. Several states have negotiated agreements with the tribes and military facilities to voluntarily report to the state PDMPs. (WV, OH and KY military and WY and OK tribal)

The bottom line is that they can voluntarily report but no federal agency has required state reporting so far. With the federal attention to prescription drug diversion, reporting may be coming.

HIPAA requirements for patient confidentiality

A few individuals and organizations have expressed concern regarding patient confidentiality and the federal requirements for HIPAA. The following is a copy from the Electronic Code of Federal Regulations and addresses the exception from HIPAA rules. Senate Bill 196 restricts accessibility to the data to individuals who are approved by the Alaska State Board of Pharmacy and the Alaska Board of Pharmacy will certainly develop the database with data integrity and security as a key component.

*“Department of Health and Human Services, Office for Civil Rights
Notice of Address for submission of requests for preemption exception determinations*

This notice advises that, in accordance with the requirements of 45 CFR 160.204(b), a request to except a provision of state law from preemption by a federal standard, requirement, or implementation specification adopted under the Administrative Simplification title of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, must be submitted in writing.

General Rule and Exceptions.

A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:

(a) a determination is made by the Secretary under CFR 160.204 that the provision of State law

(1) is necessary:

(i) to prevent fraud and abuse related to the provision of or payment for health care;
(iv) for purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or

(2) has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 USC 8802) or that is deemed a controlled substance by State law.”

In Closing

Prescription drug data will continue to be available only to entities that ALREADY have the right to obtain it under state law. This database is a tool that will assist in prescribing and dispensing practices and to improve health care for Alaska’s citizens.

If you have further concerns or suggestions for improvement, please do not hesitate to contact me or Ginger Blaisdell in my office and we’ll be happy to talk with you.

Sincerely,

Lyda Green