

**NH PDMP Advisory Council Meeting
February 11, 2019
OPLC/NH Board of Pharmacy**

Meeting Minutes

Advisory Council Members Present:

David Strang, MD, Chair, NH Medical Society (NHMS)
Stephen Crawford, DVM, Board of Veterinary Medicine (BOVM)
Gil Fanciullo, MD, NH Board of Medicine (BOM)
Sean Gill, NH Attorney General's Office, Dept. of Justice (DOJ)(via phone)
Dennis Hannon, DDS, NH Board of Dental Examiners
Joseph Harding, NH Dept. of Health and Human Services (DHHS)
Nicole Harrington, Public Member, NH Board of Pharmacy (BOP)
Eric Hirschfeld, D.D.S, NH Dental Society (via phone)
Kitty Kidder, APRN Vice Chair, NH Board of Nursing (BON)
Bradley Osgood, NH Police Chiefs' Association
Jonathan Stewart, Community Health Institute (CHI)

Advisory Council Members Absent:

David DePiero, NH Hospital Association (NHHA)
Kate Frey, New Futures
Michael Viggiano, NH State Pharmacy Associations

Also Attending:

Michelle Ricco Jonas, Manager, NH PDMP
Mark Cioffi, Analyst, NH PDMP
Joanie Foss, Administrative Assistant, NH PDMP
Kathy Bizarro-Thunberg, NH Hospital Association
Jim Giglio (TTAC) (via phone)
Irene Grzybowski - ARGO Global Capital
Pat Knue (TTAC) (via phone)
Beth Sargent (Police Association) (via phone)

The meeting began at 3:04 p.m.

• **Introductions**

• **Review & Approve Minutes**

January 14, 2019 (Public Session). Motion to accept by S. Crawford. Second by D. Hannon.
All in favor (J. Harding abstained).
January 14, 2019 (Non-Public Session). Motion to accept by K. Kidder. Second by G.
Fanciullo. No discussion. All in favor (J. Harding abstained).

- **New Business**

Audit Report – Fiscal Committee (M. Ricco Jonas)

- The latest Audit Report was approved as submitted as part of the consent calendar. The BOP drafted a strategic plan that M. Ricco Jonas is reviewing and editing, based on the recommendations from the two-day June 2018 Strategic Planning Session. That portion of the strategic plan that is being worked on will be included in the May report. She is also reviewing our responses to the Audit, to make sure we are meeting its requirements. She hopes to present a draft to the A.C. and the BOP in April and present a working plan in the Audit report to the May Fiscal Committee meeting.
- M. Ricco Jonas reported that the Program will request permission from Administrative Services to change the monthly Audit Report to a quarterly report starting in May 2019, due to actionable items lending themselves more to a quarterly format going forward.
- The next item that needs to be addressed is policy and procedures. We are currently doing this; they just need to be put in writing. The goal is to have this item reviewed and completed in July and then presented to the Fiscal Committee in August. Lastly will be any rules changes required by approved legislation. These changes will be presented at the November Fiscal Committee meeting. By the end of 2019, we hope to be done with all Audit items.

D. Strang asked how the current Fiscal Committee felt about things with the PDMP now? M. Ricco Jonas stated there was “no news.” D. Strang also asked her if there was anything in the report that the A.C. needed to review today? She replied “not at this point.”

- M. Ricco Jonas also mentioned a pending court case between the DEA and the PDMP. S. Crawford asked what the pending court case was about. M. Ricco Jonas stated that she couldn’t discuss this as it is still in litigation, however it is already public knowledge that this is over DEA’s demands to gain access to our PDMP data.
- **Legislation (PDMP Related: M. Ricco Jonas)**
 - 1) **HB 369** submitted by Rep. William Marsh (mandating SUD providers to query the PDMP) This bill would mandate a provider prescribing an opioid for a substance use disorder (SUD), to query the PDMP for the initial prescription and then at least twice a year thereafter (similar to the requirements for those prescribing opiates to treat chronic pain).
 - Committee hearing on 2/5/19 voted 20-0 “ought to pass” and placed on consent calendar.
 - Initial data reviewed through Sept. 2018: There are 456 waived SUD providers in NH (MDs, PAs and NPs). 384 (84%) are actively prescribing.

D. Strang reminded all that at the Jan. meeting, J. Giglio from TTAC questioned if the language in HB369 might conflict with CFR42 (Federal law). As a result, M. Ricco Jonas referred this concern to her contact at SAMHSA. They are still reviewing this.

J. Harding stated that some concerns were raised at the recent Healthcare Task Force meeting and there may be some opposition to this bill. There will be a need to educate the medical community and public if this passes.

- 2) HB 610 submitted by Rep. Peter Schmidt (relative to treatment alternatives to opioids)
 - In summary, this bill would create a voluntary non-opioid directive form to be used for non-opioid treatment options and would also establish insurance coverage for such treatment options. It would require a provider to review the PDMP, but only “if” the provider felt it appropriate to do so (i.e. not mandatory). This would be difficult to monitor.
 - The end result was that this entire bill was amended to just the insurance portion and when voted on as amended, the vote was 5-5. The sub-committee therefore took “no position” and it will move to the full committee with a “no position” vote. It likely will be “ITL’d” (inexpedient to legislate).
- 3) SB 120 submitted by Sen. Bob Giuda (moving the PDMP from the BOP to OPLC)
 - As requested by OPLC, the main part of this bill would move the PDMP from the BOP to a standalone program under the OPLC. OPLC would also be given the authority to establish fees for the administrative operations and maintenance of the program.
 - Other supported changes would allow the PDMP to be integrated into a facility’s electronic health record system (EHR). This would increase functionality and utilization of the PDMP by having single sign on capability thru the EHR.
 - Additionally, this bill would allow OPLC to enter into reciprocal data sharing agreements with various State agencies. It would allow PDMP data to potentially identify public health issues as well as needed resources and solutions.
 - The sponsor of the bill also desires that law enforcement have easier access to PDMP data given the concern of diversion. Language was suggested that would still mandate indirect access with a written subpoena (as opposed to a “court order” as is currently required) based on a bona fide investigation. There may be some amendments to this aspect forthcoming.
 - It would largely maintain the current makeup of the Advisory Council.

Re; law enforcement access to the PDMP, B. Osgood stated it is relatively easy to get a subpoena. One would simply go to a prosecutor to get one (the prosecutor takes the place of a judge and a court order). D. Strang stated that private citizens can write their own subpoenas. He expressed concern that such a change could allow a police dept. to get around going to a prosecutor. B. Osgood replied that this would be ill advised.

M. Ricco Jonas stated that PDMP data helps with the road map of a law enforcement investigation. B. Osgood stated that PDMP data would validate an investigation.

D. Strang asked if more police departments would need to be educated on gaining access to PDMP data? B. Osgood felt a lot of police departments don’t know about the PDMP and that, yes, there would have to be education. M. Ricco Jonas also stated that many PDs that do know about it, feel it is too difficult to get the data.

M. Ricco Jonas stated that revisions and amendments will likely be made to this bill. Language is being worked on that may allow the PDMP to give law enforcement data if there is evidence of diversion. It would still be indirect access only. B. Osgood said he did not feel law enforcement would want direct access. In fact, in the 4-1/2 years that the Program has been operational, there have only been 5 law enforcement queries, three of which were Federal requests.

D. Strang asked about the bill status? M. Ricco Jonas replied that questions about the bill had delayed it being assigned to a Senate Sub-Committee, but it likely would go before HHSEA.

D. Strang asked if there were any strong feelings about the program being kept under the BOP vs. moving to OPLC? M. Ricco Jonas replied that none had surfaced. N. Harrington stated that the BOP is supportive of the proposed move, but it had questions about whether the BOP would still be held accountable for the response to the audit. M. Ricco Jonas has checked and stated that elements that are PDMP would remain PDMP's responsibility and elements that are BOP will remain the BOP's responsibility.

J. Harding suggested having an outside entity render an opinion about the differences and/or challenges of having the program under the BOP or OPLC. D. Strang asked if he meant someone outside of the BOP and OPLC?

M. Ricco Jonas stated that the A.C. representative from the Naturopath Board would be deleted (largely due to a lack of interest from that entity) and one from the NH Association of Nurse Practitioners would be added, keeping A.C. membership at 14.

D. Strang stated it had been rumored that this bill would make the Advisory Council more of an operational council, but he does not see such wording in the bill. Others remarked they did not see this either. K. Kidder asked what other kinds of advisory councils there were under OPLC? It was not known and M. Ricco Jonas will look into this.

M. Ricco Jonas stated there was legislative "pushback" re EHR integration at this time. She feels that failure to pass an EHR link could not only be detrimental to the program, but may also endanger Federal reimbursement to the State, as CMS requires states with a PMP to adopt EHR integration by a certain time. D. Strang reported that Program comments he had received from other providers were that single sign on/link to an EHR would be very much appreciated.

M. Ricco Jonas discussed the issue of proposed data sharing agreements with our own State agencies (e.g. HHS). Although the data would need to be patient-linked initially, once the transfer has been completed, the identified portion would go away (i.e. it would become de-identified).

4) HB 638 submitted by Rep. John Janigian (relative to an opioid disclosure form – from Rule to Statute)

- This bill would codify in NH law, that prescribers *must* provide to patients a disclosure *form* on the risks of taking opioids.
- Some of the testimony provided was that this was already set in the rules of our State’s licensing boards. Additional testimony urged leaving how practitioners practice medicine in the rules of their licensing board and not defined by the State Legislature.
- On 2/5/19, the Committee’s vote on “Ought to Pass” failed. A follow-up motion to “ITL” the bill passed unanimously.

5) HB 694 submitted by Rep. Tom Dolan (relative to establishing a take back program for illicit drugs)

- On 2/6/19, this bill was presented and would authorize municipalities as well as governmental and private entities to establish take back programs for illegal drugs. The sponsoring Rep. Dolan (Londonderry) explained that the Town of Londonderry was already piloting such a project and was allowing for illicit/illegal drugs to be dropped off in a take-back receptacle in the lobby of their Police Dept. He also reported that they have shut off their security cameras to ensure that the depositing individuals maintain their anonymity. The program allows for 12 hours of “immunity” when you call the police department to set up a time to drop off your illicit/illegal drugs.
- Testimony was provided about the current Federal laws in place regarding the National take back program and what can be deposited (only schedule II–V controlled substances would be accepted). It strictly prohibits the collection of schedule I substances. Additional testimony offered concern over the window of opportunity for drug dealers to sell their drugs for up to 1 1/2 hours and then drop off a much smaller amount to the police station. An additional concern was the health of the citizens and officers who would have access to the receptacle after potentially dangerous substances were dropped off and, being unaware, these people could then be potentially exposed.

M. Ricco Jonas stated that there is no standardization established by this bill. It is up to the sponsoring town as to how they would like to do this.

D. Strang stated that take back programs are not new and asked why therefore this bill was needed. M. Ricco Jonas felt it wasn’t. She stated this bill has an unknown status.

- **Old Business**

- Update: Clinical Alerts, Prescriber Report Cards, Mandated User Module (M. Ricco Jonas)
 - 1) Clinical Alerts: We are anticipating the first release of data in April, for the Jan.-Mar. 2019 quarter. The PDMP Staff will review this and prepare a report for the A.C. and BOP to review.
 - 2) Prescriber Report Card: The first release has been pushed out to April (Oct.-Dec. 2018 and Jan.-Mar. 2019 quarters). We will be working with our vendor on a communication plan to ensure that prescribers are aware of this report and to ask them to select their appropriate specialty field.

3) Mandated User Module: We have been told by Appriss that this will be ready sometime in March. We have requested training from Appriss on this and once completed, will be able to announce a timetable to provide information to the appropriate regulatory boards.

- **Items of Interest**

None brought forward

- **Non-Public Session**

Not required

- **Next Meeting**

Date/Time: April 15, 2019; 3:00pm

Location: Office of Professional Licensure and Certification

- **Adjournment**

Motion to adjourn at 4:31 PM by K. Kidder. Second by G. Fanciullo. All in favor.

Respectfully submitted,

A handwritten signature in black ink that reads "David E. Strang MD". The signature is written in a cursive style with a large, looped "D" and "S".

David E. Strang, MD
Chairman