



February 27, 2013

The Honorable Senator Laurie Monnes-Anderson, Chair
Senate Committee on Health Care and Human Services
900 Court St. NE
Salem, Oregon 97301

RE: Proposed Amendments to Senate Bill 470

Madam Chair:

Please consider this as public testimony relating to proposed amendments to Senate Bill (SB) 470. I have been working closely with the State of Oregon from the passage of the legislation that created the Oregon Prescription Drug Monitoring Program (PDMP) to now and I am a charter member of the Oregon PDMP Advisory Commission and am not submitting testimony in that capacity. I'm submitting testimony as CEO and President of Apgar & Associates, LLC, an Oregon company that assists health care organizations of all sizes, both public and private, in the Northwest and nationally address privacy, security and compliance requirements relating to patient health information.

Following are my section-by-section comments and concerns about the proposed amendments to SB 470. I am not able to be present for the public hearing. I am available to answer any questions you or any committee members may have.

Summary – Primary Concerns:

- Section 1 – oppose as written because of patient privacy concerns
- Section 2, Disclosure to State Medical Examiner – oppose because increases access to PDMP data beyond the intent of the program
- Dash 1 – oppose because it appears to violate the HIPAA Privacy Rule (45 CFR 160.203(a)(c))
- Dash 3 – oppose because needs further study and development of criteria that would be used as part of an automated notification system that notifies practitioners and pharmacists of potential adverse outcomes related to prescribed medication
- Dash 7 – oppose because privacy and security provisions of the PDMP statute likely cannot be enforced in adjacent states potentially leading to the misuse of PDMP data and breaches of patient health information

Detailed Comments & Concerns:

Section 1:

- Adds sex, prescription number, number of days for which drug was dispensed, number of refills of prescription authorized by practitioner and the number of the refill that the pharmacy dispensed, and the source of payment for the drug:

I oppose this amendment. It may decrease false positives when searching for a patient's PDMP data but only if additional search criteria must be entered or submitted when querying patient specific information.

Section 2:

- Allows practitioner or pharmacist to delegate receipt of information to staff.

I support this amendment. It reduces the likelihood of password sharing by prescriber and helps track who actually accessed the PDMP data versus appearing as if the prescriber accessed the data.

- Allows practitioner to receive disclosure "in a form that catalogs all prescription drugs prescribed by the practitioner according to the number assigned to the practitioner by the DEA

I support this amendment. It may assist in detecting fraudulent use of a DEA number versus disclosure of information about a legitimate patient.

- Allows disclosure "to State Medical Examiner or designee of the State Medical Examiner, for the purpose of conducting mediological investigation or autopsy"

I oppose this amendment. It expands the use of the PDMP data and who has access to the data beyond the intent of the program.

- Allows disclosure of information that does not identify patient, practitioner, or drug outlet to local public health authority.

I support this amendment. For the most part this mirrors what the Oregon Health Authority is currently doing through its periodic reports that includes de-identified data by county.

Dash 1:

- Gives Board of Pharmacy rulemaking authority to add any prescription drug to PDMP.

I oppose this amendment. On the face of it this amendment violates 45 CFR 160.203(a)(c) of the HIPAA Privacy Rule. This provision allows states to monitor the dispensing of controlled substances. This amendment opens the door to monitoring prescriptions that are not controlled substances. It appears if that were the case, any new prescriptions not deemed controlled substances could not be disclosed to the State of Oregon without prior patient authorization. Disclosure without authorization would put pharmacies in regulatory jeopardy and not the State of Oregon.

Dash 3:

- Can disclose to: "a practitioner or pharmacist, as part of an automated system integrated into the prescription monitoring program by the authority that is designed to notify the practitioner or pharmacist of a potentially dangerous drug interaction, or of prescriptions made by multiple practitioners, for a patient of that practitioner or pharmacist"

I oppose this amendment. I think automated notification needs to be studied further because it may result in false reports to prescribers and or pharmacists and represents information security risks. I believe the State of Oregon must clearly determine what those flags may be and specifically the reasons such flags would be issued to prescribers and pharmacies to avoid false reports that may cause harm to patients.

Dash 7:

- Allows for access by practitioners licensed in CA, ID, and WA.

I oppose this amendment. Access by practitioners in California, Idaho and Washington are outside the statutory control of the State of Oregon. PDMP related statutes in these states are significantly less stringent when it comes to securing patient data and protecting the privacy of patients. If the amendments are adopted with later bill passage, it will be difficult if not impossible to enforce the Oregon statutory security requirements, discover and prosecute disclosure to unauthorized individuals, the illegal sharing of credentials and so forth.

This could much more easily result in the breach of PDMP data and misuse of that data unless there are statutory privacy and security protections Oregon could impose on practitioners in adjacent states but one state cannot impose its laws directly on residents and businesses in another state unless that resident or business has some legal tie (such as employed in Oregon, conducting business in Oregon, etc.) to the State of Oregon. If adjacent states PDMP statutes were similar to Oregon as it relates to privacy and security protections, I would have less of an objection.

In summary, I believe in my professional judgment that several of the proposed amendments will increase the risk to the privacy of Oregon residents' prescription data and the security of that data. If you have any questions, please feel free to contact me at (503) 384-2538 or at cappgar@apgarandassoc.com.

Sincerely,

A handwritten signature in black ink, appearing to be 'CA', with a long horizontal stroke extending to the right.

Chris Apgar, CISSP

Cc: Vice Chair Senator Jeff Kruse
Senator Tim Knopp
Senator Chip Shields
Senator Elizabeth Steiner Hayward
Committee Staff Sandy Thielecirka
Committee Staff Ashley Clark