Economic Impact Analysis
Virginia Department of Planning and Budget

18 VAC 76-20 – Regulations Governing the Prescription Monitoring Program
Department of Health Professions
January 27, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Chapter 481 of the 2002 Acts of the Assembly amended the Code of Virginia to establish a Prescription Monitoring Program (program). The program requires pharmacies to send reports to the Department of Health Professions (department) on the prescriptions they fill that have a very high potential for abuse. Chapter 25.2 of the Code of Virginia sets out requirements for the program and mandates that the department "promulgate … such regulations as are necessary to implement the prescription monitoring program as provided in this chapter …" Consequently, the department proposes these regulations, which set: 1) standards for and timing of data reports, 2) instructions on applying for reporting waivers, and 3) instructions on applying for information disclosure from the database. The proposed regulations also reiterate required criteria for reporting waivers and information disclosure from Chapter 25.2 of the Code of Virginia. Initially, this program applies only to southwestern Virginia.

Estimated Economic Impact

Purpose of the Prescription Monitoring Program

The prescription drug monitoring program is aimed at giving police better ways to investigate "doctor shopping," a practice in which drug abusers fake illness or injury to obtain prescriptions from multiple physicians. It is also intended to help identify the doctors who keep abusers in supply. The problem is especially acute in southwestern Virginia, where more than 60 people have died since 1997 from overdoses linked to an opium-based ingredient in the prescription painkiller OxyContin.[1] According to the department, Kentucky and Tennessee already have functioning prescription-monitoring programs; it is suspected that some of the criminal activity that may have been averted in those states due to their programs has moved into southwestern Virginia due to the absence of prescription monitoring.

Reporting Method, Costs, and Funding Sources

The proposed regulations require dispensers[2] to send reports to the department on the Schedule II prescriptions they fill on a semi-monthly basis. Schedule II drugs are those considered highly addictive, such as morphine, OxyContin and methadone.[3] Following the recommendation of the National Association of Chain Drug Stores, the data is to be in the Telecommunications Format for Controlled Substances of the American Society of Automation in Pharmacy. This is the same format pharmacies now use for third party payments. The program and instructions for reporting will be provided to all affected dispensers at no charge.[4] The data system to be used for prescription monitoring will be the same system pharmacies now use for third party payments. According to the department, the time and effort for dispensers to send the data will be minimal; "the data is shipped by a keystroke to the vendor."

Chapter 481 of the 2002 Acts of the Assembly states that "the provisions of this act shall become effective on the date that sufficient federal funds or other grant monies are available to support the development and operation of the prescription monitoring program for its initial year

[1] Source: November 30, 2003 article in the Bluefield Daily Telegraph
[2] § 54.1-2519 of the Code of Virginia: "'Dispenser' means a person or entity that (i) is authorized by law to dispense a covered substance or to maintain a stock of covered substances for the purpose of dispensing, and (ii) dispenses the covered substance to a citizen of the Commonwealth regardless of the location of the dispenser, or who dispenses such covered substance from a location in Virginia regardless of the location of the recipient.
[3] The U.S. Food and Drug Administration maintains the list of Schedule II drugs.
[4] Source: Department of Health Professions

of operation." Also, "this act shall first be limited to and implemented solely within State Health Planning Region III," which encompasses southwestern Virginia.[5] The department has been notified that it will receive a $180,000 grant from the Federal Bureau of Justice Assistance for the program, as well as $180,069 from a criminal settlement with a Virginia physician, that will be used to start-up and operate the first year of a prescription monitoring pilot program in southwestern Virginia. The department plans to enter the implementation phase of the program on July 1, 2003.

Chapter 481 also states that "the continuation of the prescription monitoring program shall be conditioned upon (i) the provision of appropriations from the general fund … (ii) the receipt by the program of federal funds or other grant moneys or (iii) … a combination of general fund appropriations and federal funds or other grant moneys." Further it states that "after a period of two years of operation, an evaluation of the program will be prepared by the superintendent of State Police and the director of the Department of Health Professions and forwarded to the members of the House Health, Welfare and Institutions Committee and Senate Education and Health Committee." The department has not estimated how much the program will cost after start-up and initial operation, if it is continued, but expects it will be substantially less per year than the $360,069 that is expected to be spent for the first year of operation which includes start-up costs.[6]

Concerns and Impact

One issue of concern is border effects. As discussed above, part of the reasoning for starting this pilot program in southwestern Virginia is that it is thought that some criminal activity has entered that region of the Commonwealth due to the successful deterrent to that activity in neighboring Kentucky and Tennessee. To the extent that that is accurate, similar border effects may be expected to occur between localities in State Health Planning Region III

[5] State Health Planning Region III consists of: Lee County, Scott County, Wise County, City of Norton, Dickenson County, Buchanan County, Russell County, Tazewell County, Washington County, Smyth County, Grayson County, Carroll County, Wythe County, Bland County, City of Bristol, City of Galax, Giles County, Pulaski County, Floyd County, Montgomery County, City of Radford, Alleghany County, Craig County, Botetourt County, Roanoke County, City of Clifton Forge, City of Covington, City of Salem, Roanoke City, Bedford County, Bedford County, Amherst County, Campbell County, Appomattox County, City of Lynchburg, City of Bedford, Amherst County, Campbell County, Appomattox County, City of Lynchburg, City of Bedford, Franklin County, Patrick County, Henry County, Pittsylvania County, City of Martinsville, and City of Danville.

[6] This assertion applies to running the program in southwestern Virginia. There will be additional start-up costs if the program is expanded to the rest of the Commonwealth.

and Virginia localities that border State Health Planning Region III. To prevent these adverse border effects in the Commonwealth, the Director of the Department of Health Professions has said it is likely that he will seek extension of the program to the rest of the state after the pilot program.

As described by the department, the costs to dispensers of data reporting will be small: 1) a small amount of time in initially learning how to send the data, plus 2) the time it takes to make a keystroke to send the data twice a month. If in the long run the Commonwealth does not receive full federal funding for the program, the Commonwealth will face costs (from the General Fund or elsewhere) in running the program. If the program is effective in reducing criminal behavior and drug abuse, then it will be beneficial. Whether the benefits outweigh the cost depend upon how effective the program and how much Virginians value the reduction in criminal activity and drug abuse if it indeed does occur, and how much of the cost of running the program is born by the Commonwealth. Since none of this information is known, an accurate estimate of the net benefit of the program cannot be made at this time. But given the severity of the problem (60 OxyContin-related deaths in southwestern Virginia), and the belief that similar programs in Tennessee and Kentucky have successfully deterred some of the problematic activity in their states, the benefits of the program will likely exceed their cost.

Businesses and Entities Affected

The proposed regulations directly affect the approximately 300 pharmacies in State Health Planning Region III.[7] Physicians licensed to dispense drugs in that region are also affected. Law enforcement is also affected in that criminal investigations can be aided with the collected data from the program.

Localities Particularly Affected

The proposed regulations initially directly affect the localities in State Health Planning Region III where the pilot program will take place. Those localities are: Lee County, Scott County, Wise County, City of Norton, Dickenson County, Buchanan County, Russell County, Tazewell County, Washington County, Smyth County, Grayson County, Carroll County, Wythe County, Bland County, City of Bristol, City of Galax, Giles County, Pulaski County, Floyd

[7] Number source: Department of Health Professions

County, Montgomery County, City of Radford, Alleghany County, Craig County, Botetourt County, Roanoke County, City of Clifton Forge, City of Covington, City of Salem, Roanoke City, Bedford County, Bedford County, Amherst County, Campbell County, Appomattox County, City of Lynchburg, City of Bedford, Amherst County, Campbell County, Appomattox County, City of Lynchburg, City of Bedford, Franklin County, Patrick County, Henry County, Pittsylvania County, City of Martinsville, and City of Danville. During the two-year pilot program, Virginia localities that are not in the above list, but border one or more of the above localities may be affected as well.

Projected Impact on Employment

The proposed regulations will not significantly affect employment levels.

Effects on the Use and Value of Private Property

Pharmacies and physician practices that dispense drugs for profit will send new data to the department. This required action will not significantly affect the value of their businesses.