115TH CONGRESS
*2d Session*
HOUSE OF REPRESENTATIVES
REPORT
115–684

# VETERANS OPIOID ABUSE PREVENTION ACT

MAY 18, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans' Affairs, submitted the following

# R E P O R T

[To accompany H.R. 3832]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3832) to direct the Secretary of Veterans Affairs to enter into a memorandum of understanding with the executive director of a national network of State-based prescription monitoring programs under which Department of Veterans Affairs health care providers shall query such network, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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79–006

The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Veterans Opioid Abuse Prevention Act".

**SEC. 2. DEPARTMENT OF VETERANS AFFAIRS PARTICIPATION IN NATIONAL NETWORK OF STATE-BASED PRESCRIPTION DRUG MONITORING PROGRAMS.**

(a) IN GENERAL.—Chapter 17 of title 38, United States Code, is amended by inserting after section 1730A the following new section:

**"§ 1730B. Access to State prescription drug monitoring programs**

"(a) ACCESS TO PROGRAMS.—(1) Any licensed health care provider or delegate of such a provider shall be considered an authorized recipient or user for the purpose of querying and receiving data from the national network of State-based prescription drug monitoring programs to support the safe and effective prescribing of controlled substances to covered patients.

"(2) Under the authority granted by paragraph (1)—

"(A) licensed health care providers or delegates of such providers shall query such network in accordance with applicable regulations and policies of the Veterans Health Administration; and

"(B) notwithstanding any general or specific provision of law, rule, or regulation of a State, no State may restrict the access of licensed health care providers or delegates of such providers from accessing that State's prescription drug monitoring programs.

"(3) No State shall deny or revoke the license, registration, or certification of a licensed health care provider or delegate who otherwise meets that State's qualifications for holding the license, registration, or certification on the basis that the licensed health care provider or delegate has queried or received data, or attempt to query or receive data, from the national network of State-based prescription drug monitoring programs under this section.

"(b) COVERED PATIENTS.—For purposes of this section, a covered patient is a patient who—

"(1) receives a prescription for a controlled substance; and

"(2) is not receiving palliative care or enrolled in hospice care.

"(c) DEFINITIONS.—In this section:

"(1) The term 'controlled substance' has the meaning given such term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

"(2) The term 'delegate' means a person or automated system accessing the national network of State-based prescription monitoring programs at the direction or under the supervision of a licensed health care provider.

"(3) The term 'licensed health care provider' means a health care provider employed by the Department who is licensed, certified, or registered within any State to fill or prescribe medications within the scope of his or her practice as a Department employee.

"(4) The term 'national network of State-based prescription monitoring programs' means an interconnected nation-wide system that facilitates the transfer to State prescription drug monitoring program data across State lines.

"(5) The term 'State' means a State, as defined in section 101(20) of this title, or a political subdivision of a State.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1730A the following new item:

"1730B. Access to State prescription drug monitoring programs.".

Amend the title so as to read:

A bill to amend title 38, United States Code, to provide for access by Department of Veterans Affairs health care providers to State prescription drug monitoring programs.

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3832
OFFERED BY MR. DUNN OF FLORIDA

Strike all after the enacting clause and insert the following:

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This Act may be cited as the "Veterans Opioid Abuse Prevention Act".

**SEC. 2. DEPARTMENT OF VETERANS AFFAIRS PARTICIPATION IN NATIONAL NETWORK OF STATE-BASED PRESCRIPTION DRUG MONITORING PROGRAMS.**

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"(A) licensed health care providers or delegates of such providers shall query such network in accordance with applicable regulations and policies of the Veterans Health Administration; and

"(B) notwithstanding any general or specific provision of law, rule, or regulation of a State, no State may restrict the access of licensed health care providers or delegates of such providers from accessing that State's prescription drug monitoring programs.

"(3) No State shall deny or revoke the license, registration, or certification of a licensed health care provider or delegate who otherwise meets that State's qualifications for holding the license, registration, or certification on the basis that the licensed health care provider or delegate has queried or received data, or attempt to query or receive data, from the national network of State-based prescription drug monitoring programs under this section.

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(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 1730A the following new item:

"1730B. Access to State prescription drug monitoring programs.".

Amend the title so as to read: "A bill to amend title 38, United States Code, to provide for access by Department of Veterans Affairs health care providers to State prescription drug monitoring programs.".

## PURPOSE AND SUMMARY

H.R. 3832, as amended, the "Veterans Opioid Abuse Prevention Act" would allow for the greater sharing of information between the Department of Veterans Affairs (VA) and state-based prescription drug monitoring programs (PDMPs). Representative Neal Dunn of Florida introduced H.R. 3832 on September 26, 2017.

## BACKGROUND AND NEED FOR LEGISLATION

The Centers for Disease Control and Prevention (CDC) defines a PDMP as an electronic database that tracks controlled substance prescriptions in a state and provides information about prescribing and patient patterns and behaviors.[1] PDMPs have been shown to improve prescribing, inform clinical practice, protect at-risk patients, and decrease substance abuse treatment admissions.[2]

In 2011, the National Association of Boards of Pharmacy (NABP) developed and launched the Prescription Monitoring Program (PMP) InterConnect to facilitate the secure exchange of information across state lines by PDMPs.[3] According to NABP, PDMPs are, ". . . are enhanced by PMP InterConnect because [it] provides the means for physicians and pharmacists to more easily identify patients with prescription drug abuse and misuse problems, especially if those patients are crossing state lines to obtain drugs."[4] Currently 44 states and Washington, D.C. participate in PMP InterConnect with several additional states intending to begin sharing data using PMP InterConnect.[5] [6]

Section 5701(l) of title 38 United States Code (U.S.C.) requires VA to disclose information to PDMPs for either a veteran or the dependent of a veteran who is prescribed a controlled substance through VA "to the extent necessary to prevent misuse or diversion of prescription medications." Veterans Health Administration (VHA) Directive 1306 provides VA national policy for querying PDMPs.[7] It requires PDMPs to be queried prior to initiating therapy with a controlled substance, annually at a minimum, and more often when clinically indicated unless the patient is enrolled in hos-

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[1] *What States Need to Know about PDMPs*. Centers for Disease Control and Prevention. https://www.cdc.gov/drugoverdose/pdmp/states.html. Accessed April 30, 2018.

[2] Ibid.

[3] *NABP PMP InterConnect: The Only National Network of State-Based PMPs*. National Association of Boards of Pharmacy. https://nabp.pharmacy/initiatives/pmp-interconnect/. Accessed April 30, 2018.

[4] Ibid.

[5] United States Cong. House Committee on Veterans' Affairs. *Legislative Hearing*. April 17, 2018. 115th Cong. 2nd sess. Washington: GPO, 2018 (statement from the Honorable Neal Dunn, U.S. House of Representatives, 2nd District, Florida).

[6] *NABP PMP InterConnect: The Only National Network of State-Based PMPs*. National Association of Boards of Pharmacy. https://nabp.pharmacy/initiatives/pmp-interconnect/. Accessed April 30, 2018.

[7] VHA Directive 1306. Query State Prescription Drug Monitoring Programs. October 19, 2016.

pice care or receives a controlled substance prescription for five days or less without refills.[8] The results of such query are required to be documented in the patient's medical record and are subject to limitations imposed by state law, in which case providers and prescribers are required to conform to the policies and recommendations of their state licensure.[9] According to VA, this policy allows providers to identify patients receiving controlled substances from multiple providers which may assist in preventing accidental or intentional misuse or diversion and in the detection, prevention, and early treatment of substance use disorders.[10] However, the policy does not allow VA to track controlled substance prescriptions across multiple states since VA lacks the authority to use a system like PMP InterConnect.

Section 2 of the bill would require VA to enter into an agreement with a national network of PDMPs to allow for the monitoring of controlled substance prescriptions written in participating states. It would also require VA health care providers practicing in states that do not have a PDMP to join the network of the closest state that does have a PDMP.

## HEARINGS

On April 17, 2018, the Subcommittee on Health conducted a legislative hearing on a number of bills including H.R. 3832.

The following witnesses testified:

The Honorable Beto O'Rourke, U.S. House of Representatives, 16th District, Texas; The Honorable Tim Walberg, U.S. House of Representatives, 7th District, Michigan; The Honorable Neal Dunn, U.S. House of Representatives, 2nd District, Florida; The Honorable Luis Correa, U.S. House of Representatives, 46th District, California; The Honorable Mike Coffman, U.S. House of Representatives, 6th District, Colorado; Louis J. Celli, Director, National Veterans Affairs and Rehabilitation Division, The American Legion; Adrian M. Atizado, Deputy National Legislative Director, Disabled American Veterans; Sarah S. Dean, Associate Legislative Director, Paralyzed Veterans of America; and Kayda Keleher, Associate Director, National Legislative Service, Veterans of Foreign Wars of the United States.

Statements for the record were submitted by:

The Elizabeth Dole Foundation; the Independence Fund; Veteran Cannabis Project; Wounded Warrior Project; and Iraq and Afghanistan Veterans of America.

## SUBCOMMITTEE CONSIDERATION

There was no Subcommittee consideration of H.R. 3832.

## COMMITTEE CONSIDERATION

On May 8, 2018, the full Committee met in open markup session, a quorum being present, and ordered H.R. 3832, as amended, to be reported favorably to the House of Representatives by voice vote.

[8] Ibid.
[9] Ibid.
[10] Ibid.

During consideration of the bill, the following amendment was considered and agreed to by voice vote:

An amendment in the nature of a substitute offered by Representative Neal Dunn of Florida.

## COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, there were no recorded votes taken on amendments or in connection with ordering H.R. 3832, as amended, reported to the House. A motion by Representative Tim Walz of Minnesota, Ranking Member of the Committee on Veterans' Affairs, to report H.R. 3832, as amended, favorably to the House of Representatives was agreed to by voice vote.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to improve communication between VA and state-based prescription drug monitoring programs in order to ensure the safe, effective, and appropriate prescribing of controlled substances to veteran patients.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 3832, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 3832, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 3832, as amended, provided by the Director of the Congressional Budget

Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, May 11, 2018.*

Hon. PHIL ROE, M.D.,
*Chairman, Committee on Veterans' Affairs,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3832, the Veterans Opioid Abuse Prevention Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ann E. Futrell.

Sincerely,

KEITH HALL,
*Director.*

Enclosure.

*H.R. 3832—Veterans Opioid Abuse Prevention Act*

H.R. 3832 would require medical providers at the Department of Veterans Affairs (VA) who prescribe controlled substances to veterans to seek information regarding those veterans from state programs that monitor prescription drug use. Under current policy, VA medical providers are required to query those state programs when prescribing such drugs. This bill would, therefore, codify VA's existing practice. As a result, CBO estimates that implementing the bill would cost less than $500,000 over the 2019–2023 period, primarily to prepare the necessary regulations. That spending would be subject to the availability of appropriated funds.

Enacting H.R. 3832 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3832 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 3832 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would require state-operated prescription drug monitoring programs (PDMPs) to allow VA personnel to access the databases and would preempt state laws by limiting states' authority to revoke or deny medical licenses of VA personnel who access PDMP data. CBO estimates that the incremental cost to provide access to PDMP databases by VA personnel would be minimal because PDMPs are already operational in nearly every state and servicing new users would not require significant changes to the programs. Although the preemption would limit the application of state laws, it would impose no duty on states that would result in additional spending or loss of a revenues. Therefore, the costs of the mandates would not exceed the threshold established in UMRA ($80 million in 2018, adjusted annually for inflation).

The bill contains no private-sector mandates as defined in UMRA.

The CBO staff contact for this estimate is Ann E. Futrell (for federal costs) and Andrew Laughlin (for mandates). The estimate was

reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 3832, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 3832, as amended.

## STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, H.R. 3832, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 3832, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 3832, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee estimates that H.R. 3832, as amended, contains no directed rulemaking that would require the Secretary to prescribe regulations.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

Section 1 of the bill would establish a short title for 3832, as amended, of the "Veterans Opioid Abuse Prevention Act."

*Section 2. Department of Veterans Affairs participation in national network of State-based prescription drug monitoring programs*

Section 2(a) of the bill would amend Chapter 17 of title 38 U.S.C. by inserting after section 1730A a new section "1730B. Access to State prescription drug monitoring programs."

The new section 1730B(a) would require that any licensed health care provider or delegate of such provider is required to be considered an authorized recipient or user for the purpose of querying and receiving data from the national network of State-based prescription drug monitoring programs to support the safe and effective prescribing of controlled substances to covered patients. It would also require licensed health care providers or delegates of such providers to query such network in accordance with applicable VHA regulations and policies and, notwithstanding any general or specific provision of law, rule, or regulation of a State, no State is authorized to restrict the access of licensed health care providers or delegates of such providers from accessing that State's prescription drug monitoring programs. It would further require that no State deny or revoke the license, registration, or certification of a licensed health care provider or delegate who otherwise meets that State's qualifications for holding the license, registration, or certification on the basis that the licensed health care provider or delegate has queried or received data, or attempt to query or receive data, from the national network of State-based prescription drug monitoring programs under this section.

The new section 1730B(b) would stipulate that, for the purpose of this section, a covered patient is a patient who receives a prescription for a controlled substance and is not receiving palliative care or enrolled in hospice care.

The new section 1730B(c) would define the term: "controlled substance" as having the meaning given such term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)); "delegate" as meaning a person or automated system accessing the national network of State-based prescription monitoring programs at the direction or under the supervision of a licensed health care provider; "licensed health care provider" as meaning a health care provider employed by VA who is licensed, certified, or registered within any State to fill or prescribe medications within the scope of his or her practice as a VA employee; "national network of State-based prescription monitoring programs" as meaning an interconnected nation-wide system that facilitates the transfer to State prescription drug monitoring program data across State lines; "State" as meaning a State as defined in section 101(20) of title 38 U.S.C. or a political subdivision of a State.

Section 2(b) of the bill would amend the table of sections at the beginning of chapter 17 of title 38 U.S.C. by inserting after the item relating to section 1730A the following new item: "1730B. Access to State prescription drug monitoring programs.".

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

## TITLE 38, UNITED STATES CODE

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# PART II—GENERAL BENEFITS

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## CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER I—GENERAL



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### SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

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### *§ 1730B. Access to State prescription drug monitoring programs*

*(a) ACCESS TO PROGRAMS.—(1) Any licensed health care provider or delegate of such a provider shall be considered an authorized recipient or user for the purpose of querying and receiving data from the national network of State-based prescription drug monitoring programs to support the safe and effective prescribing of controlled substances to covered patients.*

*(2) Under the authority granted by paragraph (1)—*

*(A) licensed health care providers or delegates of such providers shall query such network in accordance with applicable regulations and policies of the Veterans Health Administration; and*

*(B) notwithstanding any general or specific provision of law, rule, or regulation of a State, no State may restrict the access of licensed health care providers or delegates of such providers from accessing that State's prescription drug monitoring programs.*

*(3) No State shall deny or revoke the license, registration, or certification of a licensed health care provider or delegate who otherwise meets that State's qualifications for holding the license, registration, or certification on the basis that the licensed health care provider or delegate has queried or received data, or attempt to query or receive data, from the national network of State-based prescription drug monitoring programs under this section.*

*(b) COVERED PATIENTS.—For purposes of this section, a covered patient is a patient who—*

*(1) receives a prescription for a controlled substance; and*

*(2) is not receiving palliative care or enrolled in hospice care.*

*(c) DEFINITIONS.—In this section:*

*(1) The term "controlled substance" has the meaning given such term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).*

*(2) The term "delegate" means a person or automated system accessing the national network of State-based prescription monitoring programs at the direction or under the supervision of a licensed health care provider.*

*(3) The term "licensed health care provider" means a health care provider employed by the Department who is licensed, certified, or registered within any State to fill or prescribe medications within the scope of his or her practice as a Department employee.*

*(4) The term "national network of State-based prescription monitoring programs" means an interconnected nation-wide system that facilitates the transfer to State prescription drug monitoring program data across State lines.*

*(5) The term "State" means a State, as defined in section 101(20) of this title, or a political subdivision of a State.*

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