

Facts on NASPER

By Randi Hutchinson

The federal National All Schedules Prescription Electronic Reporting (NASPER) Act (PL 109-60) was first brought to congressional attention by a group called the American Society of Interventional Pain Physicians (ASIPP). These are physicians who specialize in the treatment of patients with severe and chronic pain. For many people these doctors are their last hope for finding some relief for their pain. While a lot of the treatments involve interventional surgical procedures, ASIPP doctors also use prescription drugs to help their patients. As the doctors presented their case to Congress, they pointed out that when a patient walks into their office they have no way of knowing if they are the first doctor that patient has seen that day or the tenth. If the doctor's diagnosis requires prescription drugs, and if the doctor suspects that the patient may be doctor shopping, the only way that doctor now has to check out her suspicion is to get on the phone and call around to various pharmacies in the area. If the doctor practices in a town that closely borders another state, the doctor ends up calling pharmacies in multiple states.

The doctors also pointed out that with our nation's aging population, many patients now see multiple doctors for various ailments. If an elderly patient forgets or cannot remember all the prescription drugs she is taking, there is always the possibility of one of the doctors inadvertently prescribing a drug that adversely interacts with the drug regime already in place.

Given the advancement of technology in the health care arena, the ASIPP doctors wanted to find a way to use this technology to help them better care for their patients. There are currently 24 states that have an operational PDMP in place. Another nine states have authorized programs (http://www.natlalliance.org/prescription_drug.asp).

For several years Congress has appropriated grant money through the Department of Justice (DOJ) for states to use in setting up or improving a PDMP. Last year DOJ gave out grant money to 18 states (see attached link -- then click on FY 2006 Prescription Drug Monitoring Program Grant Awards).

<http://www.ojp.usdoj.gov/BJA/grant/prescripdrugs.html>
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However, the ASIPP doctors feel that prescription drug abuse is primarily a health care issue -- not a law enforcement issue -- and that is why they approached Congress and asked for the NASPER legislation. The NASPER law is much more health care focused than the current DOJ program. NASPER would be administered through the Department of Health and Human Services (HHS) as opposed to DOJ (the money that flows through DOJ does not come

from an authorized program. Congressman Hal Rogers, who sits on the Appropriations Committee, simply puts money into the Hal Rogers Program at DOJ each year). NASPER lays out criteria and safeguards that must be followed in collecting and releasing the information. States are also able to add additional safeguards, if they so choose. It took three Congresses (almost six years) for an agreement to be reached on the NASPER law. There was broad, bipartisan support, which was reflected in the lead sponsors of the legislation. The Senate bill was sponsored by Senators Jeff Sessions of Alabama and Dick Durbin of Illinois. The House bill was sponsored by Reps. Ed Whitfield of Kentucky and Frank Pallone of New Jersey. The House legislation had 56 cosponsors, which spanned the political spectrum. The Sessions/Durbin bill had similar support from Senators Kennedy, Dodd, Alexander, Burr, Talent and Vitter.

Health Care groups also joined in support. Many, like the American Medical Association, had initial concerns, which they worked with Congressional Members to address. The AMA became one of the strongest supporters of NASPER because they saw the legislation as providing a means by which doctors could use technology to help their patients.

Most pharmacies now collect and report prescription drug information by electronic means. Since this information is already in electronic form, it has not been difficult for states to set up an electronic reporting system for their PDMPs. However, if a pharmacy does not collect this information electronically, the NASPER law provides that the information can be submitted by paper form. Another concern that has been raised multiple times is the ability of law enforcement to access this information. Nothing in the NASPER law changes the ability or authority of law enforcement to have access to prescription drug information. As stated in the link below: "Historically, when investigators needed to review prescription information for both routine pharmacy inspections and case investigations they would have to manually sort through paper copies of prescriptions. The PMP database eliminates this tedious process by requiring the prescription information to be maintained electronically. This allows investigators to obtain pharmacy data from multiple locations without having to visit each and every pharmacy." (

There have also been questions raised about confidentiality. Every PDMP provides safeguards to protect patient confidentiality and access to the information through statutes or regulations. The federal NASPER law also requires protections to be in place as well as severe penalties for any possible abuse of the system. It is worth noting, however, that after decades of operation, no PDMP has reported a breach of confidentiality (the first PDMP was established in California in 1940).

A 2002 General Accounting Office study on PDMPs found that the existence of a PDMP within a state appears to increase drug division activities in contiguous non-PDMP states (page 16). If you review the most recent FY 06 grants from the

DOJ, you will see that three of those awards were given to states who border Arkansas (Mississippi, Oklahoma and Texas). Tennessee has also enacted a program and Missouri is currently working on its own PDMP. That would leave Arkansas completely surrounded by states that had a PDMP in place.

Randi Fredholm Hutchinson, Esq, Dickstein Shapiro LLP, has worked on the federal legislation and offers this article in order to give our members a briefing on the history on the federal law and its intent.