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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 423 Session of  
2013

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INTRODUCED BY WARD, MENSCH, WAUGH, SOLOBAY, RAFFERTY, WOZNIAK  
AND BROWNE, MARCH 6, 2013

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REFERRED TO PUBLIC HEALTH AND WELFARE, MARCH 6, 2013

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AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania  
2 Consolidated Statutes, establishing the Prescription Drug  
3 Monitoring Program; providing for powers and duties of the  
4 Department of Drug and Alcohol Programs; and imposing  
5 penalties.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Title 44 of the Pennsylvania Consolidated  
9 Statutes is amended by adding a chapter to read:

10 CHAPTER 27

11 PRESCRIPTION DRUG MONITORING PROGRAM

12 Sec.

13 2701. Scope of chapter.

14 2702. Definitions.

15 2703. Prescription Drug Monitoring Program.

16 2704. Requirements for monitoring system.

17 2705. Access to prescription information.

18 2706. Unlawful acts and penalties.

19 2707. Education and treatment.

1 2708. Immunity.

2 2709. Additional provisions.

3 2710. Use of money collected.

4 2711. Rules and regulations.

5 2712. Evaluation, data analysis and reporting.

6 2713. Concurrent jurisdiction.

7 § 2701. Scope of chapter.

8 This chapter relates to prescription drug monitoring.

9 § 2702. Definitions.

10 The following words and phrases when used in this chapter  
11 shall have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Active investigation." An investigation that is being  
14 conducted with a reasonable good faith belief that it could lead  
15 to the filing of administrative, civil or criminal proceedings  
16 or that is ongoing and continuing and for which there is a  
17 reasonable good faith anticipation of securing an arrest or  
18 prosecution in the foreseeable future.

19 "Alcohol and other drug addiction treatment program." Any  
20 facility or treatment program that is licensed by the  
21 Commonwealth to provide alcohol and other drug addiction  
22 treatment on a hospital, nonhospital residential or outpatient  
23 basis.

24 "Controlled substance." A drug, substance or immediate  
25 precursor included in Schedule II, III, IV or V of the act of  
26 April 14, 1972 (P.L.233, No.64), known as The Controlled  
27 Substance, Drug, Device and Cosmetic Act, or the Controlled  
28 Substances Act (Public Law 91-513, 84 Stat. 1236).

29 "Department." The Department of Drug and Alcohol Programs of  
30 the Commonwealth.

1 "Dispense." To deliver a controlled substance, other drug or  
2 device to an ultimate user by or pursuant to the lawful order of  
3 a practitioner.

4 "Dispenser." A practitioner who dispenses in this  
5 Commonwealth, including mail order and Internet sales of  
6 pharmaceuticals. The term does not include any of the following:

7 (1) A licensed health care facility or long-term care  
8 pharmacy that distributes the controlled substance, other  
9 drug or device for the purpose of inpatient hospital or long-  
10 term care facility administration.

11 (2) A practitioner or other authorized person who  
12 administers a controlled substance, other drug or device.

13 (3) A wholesale distributor of a controlled substance.

14 (4) A hospice care provider.

15 (5) A medical practitioner at a health care facility  
16 licensed by this Commonwealth if the quantity of controlled  
17 substances dispensed is limited to an amount adequate to  
18 treat the patient for a maximum of 24 hours with not more  
19 than two 24-hour cycles within any 15-day period.

20 "Internet pharmacy." A person, entity or Internet website,  
21 whether in the United States or abroad, that knowingly or  
22 intentionally delivers, distributes or dispenses, or offers or  
23 attempts to deliver, distribute or dispense, a controlled  
24 substance by means of the Internet, including a pharmacy.

25 "Licensed health care facility." A health care facility that  
26 is licensed under Article X of the act of June 13, 1967 (P.L.  
27 31, No.21), known as the Public Welfare Code, or the act of July  
28 19, 1979 (P.L.130, No.48), known as the Health Care Facilities  
29 Act.

30 "Monitoring program." The Prescription Drug Monitoring

1 Program established in section 2703 (relating to Prescription  
2 Drug Monitoring Program).

3 "Monitoring system." The monitoring program database  
4 established and maintained under section 2704(c) (relating to  
5 requirements for monitoring system).

6 "Practitioner." The term includes:

7 (1) A physician, dentist, veterinarian, pharmacist,  
8 podiatrist, physician assistant, certified registered nurse  
9 practitioner or other person licensed, registered or  
10 otherwise permitted to distribute, dispense or to administer  
11 a controlled substance, other drug or device in the course of  
12 professional practice or research in this Commonwealth.

13 (2) A pharmacy, hospital, clinic or other institution  
14 licensed, registered or otherwise permitted to distribute,  
15 dispense, conduct research with respect to or to administer a  
16 controlled substance, other drug or device in the course of  
17 professional practice or research in this Commonwealth.

18 "Ultimate user." A person who lawfully possesses a  
19 controlled substance, other drug, device or cosmetic for the  
20 person's own use or for the use of a member of the person's  
21 household or for administering to an animal in the person's  
22 care.

23 § 2703. Prescription Drug Monitoring Program.

24 (a) General rule.--The department shall establish and  
25 administer the Prescription Drug Monitoring Program for  
26 identifying controlled substances that are dispensed within this  
27 Commonwealth by a practitioner or dispenser, including, but not  
28 limited to, a practitioner or dispenser that dispenses to a  
29 person or ships to an address within this Commonwealth.

30 (b) Data compliance.--Data required by this section shall be

1 submitted in compliance with this section to the department by a  
2 pharmacy or other dispensing entity.

3 (c) Registration.--Each dispenser and practitioner  
4 dispensing or prescribing controlled substances shall register  
5 with and establish a user name and personal identification  
6 number that permits access to the secure Internet website  
7 housing the monitoring system.

8 (d) Practitioner queries.--A practitioner may query data  
9 through the department.

10 (e) Law enforcement queries.--A Federal or State law  
11 enforcement official whose duties include enforcing laws  
12 relating to controlled substances and prescription drugs shall  
13 be provided access to the information from the monitoring system  
14 relating to the person who is the subject of an active  
15 investigation of:

16 (1) A drug abuse offense, including, but not limited to,  
17 violations of the act of April 14, 1972 (P.L.233, No.64),  
18 known as The Controlled Substance, Drug, Device and Cosmetic  
19 Act.

20 (2) Insurance fraud.

21 (3) Medicare fraud.

22 (4) Medicaid fraud.

23 § 2704. Requirements for monitoring system.

24 (a) Submission.--The dispenser shall, regarding each  
25 controlled substance dispensed, submit by electronic means to  
26 the department the following information using methods of  
27 transmission protocols and in a format established by the  
28 department:

29 (1) Full name of the prescribing practitioner.

30 (2) Prescriber Drug Enforcement Agency (DEA)

1 registration number.

2 (3) Date the prescription was written.

3 (4) Date the prescription was dispensed.

4 (5) Full name, date of birth, gender and address of the  
5 person for whom the prescription was written and dispensed.

6 (6) Name of the controlled substance.

7 (7) Quantity of the controlled substance prescribed.

8 (8) Strength of the controlled substance.

9 (9) Quantity of the controlled substance dispensed.

10 (10) Dosage quantity and frequency prescribed.

11 (11) Name of the pharmacy or other entity dispensing the  
12 controlled substance.

13 (12) Dispensing entity's DEA registration number and  
14 National Provider Identifier (NPI).

15 (13) Source of payment for the prescription.

16 (14) Other relevant information as established by  
17 department regulations.

18 (b) Frequency.--Each dispenser shall submit the information  
19 required by this chapter as frequently as specified by the  
20 department, but not later than seven days after the dispensing  
21 of a controlled substance identified by the monitoring program.  
22 The department shall implement a real-time reporting requirement  
23 as expeditiously as possible.

24 (c) Database.--The department shall establish and maintain a  
25 monitoring system in an electronic file or by other means  
26 established by the department to facilitate use of the  
27 monitoring program database.

28 (d) Recordkeeping.--The department shall maintain a record  
29 of the monitoring system queries for reference, including:

30 (1) Identification of each person who requests or

1 receives information from the monitoring system.

2 (2) The information provided to each person.

3 (3) The date and time the information is requested and  
4 provided.

5 (e) Expungement.--The department shall remove from the  
6 monitoring system all identifying information more than six  
7 years old from the date of collection. The information shall  
8 then be destroyed unless a law enforcement agency or a  
9 professional licensing or certification agency or board for  
10 prescribers or dispensers has submitted a written request to the  
11 department for retention of specific information. All requests  
12 shall comply with procedures adopted by the department.

13 § 2705. Access to prescription information.

14 (a) General rule.--Except as set forth in subsection (c),  
15 prescription information submitted to the department and records  
16 of requests to query the data shall be confidential and not  
17 subject to disclosure under the act of February 14, 2008 (P.L.6,  
18 No.3), known as the Right-to-Know Law.

19 (b) Privacy procedures.--The department shall maintain  
20 procedures to ensure that the privacy and confidentiality of  
21 patients and patient information collected, recorded,  
22 transmitted and maintained is not disclosed to persons except  
23 those enumerated in subsection (c).

24 (c) Limited availability.--The department shall make  
25 information in the monitoring system available only to the  
26 following persons and in accordance with department regulations:

27 (1) Personnel of the department specifically assigned to  
28 conduct internal reviews related to controlled substance laws  
29 under the jurisdiction of the department.

30 (2) Authorized department personnel engaged in analysis

1 of controlled substance prescription information as a part of  
2 the assigned duties and responsibilities of their employment.

3 (3) Qualified personnel for the purpose of bona fide  
4 research or education. Data elements that would reasonably  
5 identify a specific recipient, prescriber or dispenser shall  
6 be deleted or redacted from the information prior to  
7 disclosure. Release of the information shall only be made  
8 pursuant to a written agreement between the qualified  
9 personnel and the department in order to ensure compliance  
10 with this chapter.

11 (4) A practitioner or a representative employed by the  
12 practitioner, designated by the practitioner pursuant to  
13 criteria established by the department, having authority to  
14 prescribe controlled substances to the extent that the  
15 information relates to a current patient of the practitioner  
16 to whom the practitioner is prescribing or considering  
17 prescribing any controlled substance.

18 (5) A pharmacist or a designee employed by the  
19 pharmacist, designated by the pharmacist pursuant to criteria  
20 established by the department, having authority to dispense  
21 controlled substances to the extent the information relates  
22 specifically to a current patient to whom that pharmacist is  
23 dispensing or considering dispensing any controlled  
24 substance.

25 (6) A designated representative from the Commonwealth or  
26 an out-of-State agency or board responsible for licensing or  
27 certifying prescribers or dispensers who is involved in an  
28 active investigation of a prescriber or dispenser whose  
29 professional practice was or is regulated by that agency or  
30 board.



1           (7) A medical examiner or county coroner for the purpose  
2 of investigating the death of an individual.

3           (8) A designated prescription monitoring official of a  
4 state with which this Commonwealth has an interoperability  
5 agreement who may access prescription drug monitoring  
6 information in accordance with the provisions of this chapter  
7 and procedures adopted by the department.

8           (9) An individual who is the recipient of a controlled  
9 substance prescription entered into the monitoring system  
10 upon providing evidence satisfactory to the monitoring system  
11 manager that the individual requesting the information is in  
12 fact the person about whom the data entry was made.

13           (10) The Office of Attorney General or the equivalent  
14 law enforcement officer of another state to the extent  
15 necessary for an active investigation of a criminal violation  
16 of law governing controlled substances.

17       (d) Dispenser access.--No person may knowingly hinder a  
18 practitioner who dispenses who is eligible to receive  
19 information from the monitoring system from requesting and  
20 receiving the information in a timely fashion.

21 § 2706. Unlawful acts and penalties.

22       (a) Prohibition.--A person may not knowingly and  
23 intentionally use, release, publish or otherwise make available  
24 any information obtained from the monitoring system for any  
25 purpose other than those specified in section 2705(c) (relating  
26 to access to prescription information).

27       (b) Penalty.--A person who violates subsection (a):

28           (1) Is subject to a civil penalty of not less than  
29 \$5,000 for each violation.

30           (2) Commits a felony of the third degree.

1 (c) Misrepresentation or fraud.--Any person who obtains or  
2 attempts to obtain information from the monitoring system by  
3 misrepresentation or fraud commits a felony of the third degree.

4 (d) Unauthorized purpose.--Any person who obtains or  
5 attempts to obtain information from the monitoring system for a  
6 purpose other than a purpose authorized by this chapter or by  
7 department regulations commits a felony of the third degree.

8 (e) Civil violation.--The procedure for determining a civil  
9 violation of this section shall be in accordance with department  
10 regulations. Civil penalties assessed under this section shall  
11 be:

12 (1) Deposited in the General Fund.

13 (2) Appropriated to the department.

14 (3) Dedicated to the monitoring program.

15 (f) Failure to submit.--The failure of a dispenser to submit  
16 information to the monitoring system as required under this  
17 chapter, after the department has submitted a specific written  
18 request for the information or when the department determines  
19 the dispenser has a demonstrable pattern of failure to submit  
20 the information as required, is grounds for the appropriate  
21 licensing board to take the following action in accordance with  
22 the appropriate licensing act:

23 (1) Prohibit an Internet pharmacy from conducting  
24 business in this Commonwealth.

25 (2) Refuse to issue a license to the individual.

26 (3) Refuse to renew the individual's license.

27 (4) Revoke, suspend, restrict or place on probation the  
28 license.

29 (5) Issue a public or private reprimand to the  
30 individual.

1           (6) Issue a cease and desist order.

2           (7) Impose a civil penalty of not more than \$1,000 for  
3 each failure to submit information required by this chapter.

4 § 2707. Education and treatment.

5           (a) General rule.--The department shall:

6           (1) Assist the appropriate agency, board or association  
7 for each category of authorized user in this chapter to  
8 incorporate the appropriate information regarding the  
9 monitoring program into the training, education or  
10 instruction provided to each category of authorized user.

11           (2) Assist the State or regional chapter of the American  
12 Society of Addiction Medicine, the Pennsylvania Medical  
13 Society, the Pennsylvania Academy of Family Physicians and  
14 the Pennsylvania Coalition of Nurse Practitioners to develop  
15 a continuing education course for health care professionals  
16 on prescribing practices, pharmacology and identification,  
17 referral and treatment of patients addicted to or abusing  
18 controlled substances identified by the monitoring program.

19           (3) Implement or assist other appropriate agencies to  
20 implement an educational program to inform the public about  
21 the use, diversion and abuse of, addiction to and treatment  
22 for the addiction to the controlled substances identified by  
23 the monitoring program, including the nature and scope of the  
24 program.

25           (b) Referral.--The department shall refer prescribers and  
26 dispensers it has reason to believe may be impaired to the  
27 appropriate professional licensing or certification agency and  
28 to the appropriate impaired professionals associations to  
29 provide intervention, assessment and referral to alcohol and  
30 other drug addiction treatment programs and ongoing monitoring

1 and follow-up.

2 (c) Identification.--The department shall work with the  
3 patient's individual practitioner and the appropriate alcohol  
4 and other drug addiction treatment professionals to provide that  
5 patients identified through the monitoring system as potentially  
6 addicted to a controlled substance are assessed and referred to  
7 alcohol and other drug addiction treatment programs.

8 § 2708. Immunity.

9 An individual who has submitted to or received information  
10 from the monitoring system in accordance with this chapter may  
11 not be held civilly liable or disciplined in a licensing board  
12 action for having submitted the information or for not seeking  
13 or obtaining information from the monitoring program prior to  
14 prescribing or dispensing a controlled substance to a patient.

15 § 2709. Additional provisions.

16 (a) Funding.--A practitioner shall not be required to pay a  
17 fee or tax specifically dedicated to establishment, operation or  
18 maintenance of the monitoring program.

19 (b) Costs.--All costs associated with recording and  
20 submitting data as required in this chapter shall be assumed by  
21 the submitting dispenser.

22 (c) Use of data.--Except as provided in subsection (d), data  
23 provided to, maintained in or accessed from the monitoring  
24 system that may be identified to or with a particular person is  
25 not subject to discovery, subpoena or similar compulsory process  
26 in any civil, judicial, administrative or legislative  
27 proceeding, nor shall any individual or organization with lawful  
28 access to the data be compelled to testify with regard to the  
29 data.

30 (d) Exceptions.--The restrictions in subsection (c) do not

1 apply to:

2 (1) A criminal proceeding.

3 (2) A civil, judicial or administrative action brought  
4 to enforce this chapter.

5 § 2710. Use of money collected.

6 (a) General rule.--The department may use the moneys  
7 deposited in the General Fund and appropriated to the department  
8 for the following purposes:

9 (1) Maintenance and replacement of monitoring system  
10 equipment, including hardware and software.

11 (2) Training of staff.

12 (3) Pursuit of grants and matching funds.

13 (b) Collections.--The department may collect any penalty  
14 imposed under section 2706 (relating to unlawful acts and  
15 penalties) and which is not paid by bringing an action in the  
16 court of common pleas of the county in which the person owing  
17 the debt resides or in the county where the department is  
18 located.

19 (c) Legal assistance.--The department may seek legal  
20 assistance from the Attorney General or the county or district  
21 attorney of the county in which the action is brought to collect  
22 the fine.

23 (d) Attorney fees and costs.--The court shall award  
24 reasonable attorney fees and costs to the department for  
25 successful collection actions under section 2706.

26 § 2711. Rules and regulations.

27 The department shall promulgate rules and regulations setting  
28 forth the procedures and methods for implementing this chapter.  
29 At a minimum, the rules and regulations shall include the  
30 following:

1       (1) Effectively enforce the limitations on access to the  
2 monitoring system prescribed in section 2705 (relating to  
3 access to prescription information).

4       (2) Establish standards and procedures to ensure  
5 accurate identification of individuals requesting information  
6 or receiving information from the monitoring system.

7       (3) Allow adequate time following implementation of this  
8 chapter for dispensers and practitioners to make the changes  
9 to their operational systems necessary to comply with this  
10 chapter.

11       (4) Allow for dispensers to have ease of transition to  
12 comply with the requirements of the monitoring system.

13       (5) Not place an undue burden on law enforcement seeking  
14 information related to an investigation.

15       (6) Provide that dispensers and practitioners licensed  
16 to practice in this Commonwealth shall not be held liable for  
17 failure to comply with monitoring system requirements until  
18 all changes are fully operational and dispensers and  
19 practitioners have had adequate time to make necessary  
20 adjustments to operating systems and to receive training to  
21 fully accommodate the changes upon promulgation of the  
22 regulations, but not later than one year after the effective  
23 date of this chapter.

24       (7) Provide that dispensers who can show good cause for  
25 not submitting data electronically may be authorized to  
26 submit data manually if they lack Internet access.

27 § 2712. Evaluation, data analysis and reporting.

28       (a) General rule.--The department shall design and implement  
29 an evaluation component to identify:

30           (1) Cost benefits of the monitoring program.

1           (2) The impact on efforts to reduce misuse, abuse,  
2 overdose and diversion of or addiction to controlled  
3 substances.

4           (3) The impact on prescribing practices for controlled  
5 substances.

6           (4) The number of patients identified through the  
7 monitoring system as potentially addicted to a controlled  
8 substance that were assessed for alcohol and other drug  
9 addictions.

10          (5) The number of patients in paragraph (4) that  
11 received alcohol and other drug addiction treatment and the  
12 names of the licensed alcohol and other drug addiction  
13 treatment facilities in which the patients were treated.

14          (6) The progress made in implementing real-time  
15 reporting.

16          (7) Other information relevant to policy, research and  
17 education involving controlled substances and drugs of  
18 concern identified by the monitoring program.

19          (b) Annual report.--The department shall annually report the  
20 information specified in subsection (a) to the Public Health and  
21 Welfare Committee of the Senate and the Human Services Committee  
22 of the House of Representatives. Additionally, the department  
23 shall make the annual report available to the public on its  
24 publicly accessible Internet website.

25          § 2713. Concurrent jurisdiction.

26          The Attorney General shall have concurrent prosecutorial  
27 jurisdiction with the county district attorney for violations of  
28 this chapter. No person charged with a violation of this chapter  
29 by the Attorney General shall have standing to challenge the  
30 authority of the Attorney General to prosecute the case and, if

1 a challenge is made, the challenge shall be dismissed, and no  
2 relief shall be available in the courts of this Commonwealth to  
3 the person making the challenge.

4 Section 2. The provisions of this act are severable. If any  
5 provision of this act or its application to any person or  
6 circumstance is held invalid, the invalidity shall not affect  
7 other provisions or applications of this act which can be given  
8 effect without the invalid provision or application.

9 Section 3. This act shall take effect in 60 days.