

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 1180

**PRINTER'S NO.** 1981

**AMOUNT**

See Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

November 18, 2013

**PRIME SPONSOR**

Senator Vance

**DESCRIPTION AND PURPOSE OF BILL**

Senate Bill 180 creates the Achieving Better Care by Monitoring All Prescriptions (ABC-MAP) Program with the Department of Health for the purpose of improving patient care and preventing drug abuse. The ABC-MAP Program will consist of an electronic data system listing controlled substances that are prescribed and dispensed in the Commonwealth.

An ABC-MAP Board is created within the Department of Health for the purpose of establishing and overseeing the program. The Board is chaired by the Secretary of Health. The following individuals or their designees will also serve:

- Secretary of Public Welfare;
- Secretary of Drug and Alcohol Programs;
- Secretary of State;
- Insurance Commissioner;
- Secretary of Aging;
- State Police Commissioner;
- Attorney General; and,
- The Physician General, if the Secretary of Health is not a physician.

Members shall serve for the duration of their elected or appointed position and shall meet at least yearly for the purpose of assessing the costs and benefits of the program and making any necessary changes.

The board shall have the following responsibilities:

- Secure a vendor of an electronic prescription monitoring system.
- Appoint an advisory group.
- Provide notice to patients that information regarding prescriptions for controlled substances is being collected by the ABC-MAP Program.
- Phase in the enforcement process so dispensers and prescribers have adequate time to transition.
- Develop policies and protocols to access, evaluate, release and secure the information in the database.
- Train and educate prescribers and dispensers on the use of the database.

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- Aid prescribers in identifying at-risk individuals and referring them to drug addiction professionals.
- Keep pace with technological advancements.
- Establish professionally developed criteria, with the advisory group that generates referrals of prescription monitoring information to law enforcement or the appropriate licensing board in the Department of State only if there is a pattern of irregular data deviating from the clinical standard.

The advisory group appointed by the board shall consist of no more than twelve members and shall be convened at least annually. It shall be comprised of dispensers, prescribers, law enforcement, patient and privacy advocates and individuals with expertise considered important to the operation of the program.

Requires all members to have unique perspectives.

The ABC-MAP Program shall be administered on a daily basis by the Department of Health and shall be easily accessible by prescribers, dispensers and patients. The Program shall:

- Provide training and support for those using the database; and
- Maintain a record of database queries that identifies each person requesting or receiving information, the information provided and the date and time of these activities.

The board shall remove all identifying information from the program more than four years old unless retention is requested by law enforcement or a licensing board for prescribers or dispensers. The program shall also allow for dispensers and prescribers who are unable to submit data electronically to do so manually.

Current pharmacy reporting requirements to the Attorney General shall expire and shall no longer be enforceable upon the full implementation of the program.

### **Dispenser Requirements:**

Dispensers shall electronically submit information regarding each controlled substance that is dispensed that identifies the prescriber, the patient, the DEA registration number, the National Drug Code and method of payment. This information must be submitted no later than 72 hours after dispensing. Dispenser includes mail order and internet pharmacies.

Specifically excluded from the definition of dispenser is:

- A licensed health care facility that distributes the controlled substance for the purpose of administration in the licensed health care facility,
- A correctional facility,
- An authorized person who administers the drug,
- A wholesale distributor,
- A licensed life provider,

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- A hospice provider, a prescriber if the amount dispensed is limited to an amount to treat the patient for a maximum of 24 hours with not more than two 24-hour cycles within a 15-day period; and
- A veterinarian.

### **Prescriber Requirements:**

A prescriber shall query the program for each patient the first time the patient is prescribed a controlled substance by the prescriber and if the prescriber believes, using sound clinical judgment, a patient may be abusing or diverting drugs. A prescriber shall indicate in the patient's medical record the information obtained from the program if the patient is new or the prescriber determines a drug should not be prescribed or furnished.

States that a prescriber or dispenser who, using a sound standard of care in the exercise of clinical judgment, does not believe that a patient is abusing or diverting controlled substances shall not be in violation of the act for not seeking or obtaining information from the program prior to prescribing or dispensing so long as the prescriber or dispenser is otherwise in compliance.

### **Program Access:**

- Prescribers for existing patients and prescriptions written using the prescriber's Drug Enforcement Agency number.
- Dispensers for a current patient to whom the dispenser is dispensing or considering dispensing.
- Federal and state law enforcement.
- Schedule II as indicated in The Controlled Substance, Drug, Device and Cosmetic Act and in the manner determined by the Attorney General.
- All other schedules upon receipt of court order. Data obtained may only be used by a law enforcement official to establish probable cause.
- A grand jury investigating a criminal violation of a law governing controlled substances.
- Department personnel who are conducting internal reviews and data analysis.
- Designated representatives from the Commonwealth or out-of-state agency or board responsible for licensing or certifying prescribers or dispensers for the purpose of conducting administrative investigations or proceedings.
- Personnel from the following agencies for the purpose of administering their pharmacy programs.
- The Department of Public Welfare.
- The Insurance Department.
- The Department of Aging.
- Medical examiner or county coroner for the purpose of investigating a death.

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- A prescription drug monitoring official of a state with an interoperability agreement with the Commonwealth.
- Patients or their parent, guardian or health care power of attorney upon proof of identity and within six months from the date of request.

### **Unlawful acts and penalties:**

An individual who obtains, or knowingly or intentionally releases, publishes or makes the data available for purposes other than those specified will be guilty of a third degree misdemeanor. Prescribers and dispensers in violation of the act shall also be subject to sanctions under their professional practice acts.

A civil penalty of not less than \$2,500 for each offense may also be assessed.

The department may collect reasonable attorney fees and costs for successful actions.

### **Program Funding:**

Civil penalties shall be deposited in the General Fund and appropriated to the department to implement the program. All costs associated with submitting and recording the data shall be assumed by the submitting dispenser. Any fees or taxes associated with the program are prohibited. Any funds currently appropriated shall be redirected and used for this program. Licensing boards may also transfer funds for operation of the program.

### **Admissibility:**

Information in the program shall not be admissible unless it is for a criminal proceeding or an action brought to enforce the provisions of this act.

### **Annual Report:**

Within two years of the effective date of the act and annually thereafter, the board shall submit a report to the General Assembly that indicates:

- The number of times the program is legally and illegally accessed.
- Rate by which prescribers are utilizing the program.
- Any impact on prescribing practices.
- Cost effectiveness of the frequency of data submission.
- Effectiveness of the interoperability with other states and electronic medical records.

The Attorney General shall have concurrent prosecutorial jurisdiction with the county district attorney for violations.

### **Effective Date:**

The section regarding organization and meetings of the board shall take effect in 90 days.

The remainder shall take effect June 30, 2015.

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### **FISCAL IMPACT:**

Based on information from the Department of Health and reviewing cost information from other states, the estimated first-year cost to the Department of Health could range from \$1,100,000 to \$2,100,000 depending on the amount of customization required for the implementation of the database system. Ongoing annual costs for staffing, system operation, maintenance and training are estimated to range from \$600,000 to \$1,000,000. These costs will be offset by a reduction in the Office of Attorney General's (OAG) budget of approximately \$120,000 per year when ABC-MAP is operational and the OAG's existing database is discontinued.

There is a federal grant program, Harold Rogers PDMP, which is available to states to plan, implement and enhance their prescription drug monitoring programs which would reduce the Commonwealth's General Fund costs. The planning grants are up to \$50,000, the implementation grants are up to \$400,000 and the enhancement grants are up to \$400,000.