

PENNSYLVANIA DRUG AND ALCOHOL ABUSE CONTROL ACT

Act of Apr. 14, 1972, P.L. 221, No. 63

Cl. 35

AN ACT

Establishing the Pennsylvania Advisory Council on Drug and Alcohol Abuse; imposing duties on the Department of Health to develop and coordinate the implementation of a comprehensive health, education and rehabilitation program for the prevention and treatment of drug and alcohol abuse and drug and alcohol dependence; providing for emergency medical treatment; providing for treatment and rehabilitation alternatives to the criminal process for drug and alcohol dependence; and making repeals. (Title amended Dec. 20, 1985, P.L.529, No.119)

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

Section 1. Short Title.--This act shall be known and may be cited as the "Pennsylvania Drug and Alcohol Abuse Control Act."

Section 2. Definitions:

(a) The definitions contained and used in the Controlled Substance, Drug, Device and Cosmetic Act shall also apply for the purposes of this act.

(b) As used in this act:

"Business associate" means "business associate" as defined in 45 CFR 160.103 (relating to definitions). (Def. added July 7, 2022, P.L.430, No.33)

"Controlled Substance" means a drug, substance, or immediate precursor in Schedules I through V of the Controlled Substance, Drug, Device and Cosmetic Act.

"Council" means the Pennsylvania Advisory Council on Drug and Alcohol Abuse established by this act.

"Court" means all courts of the Commonwealth of Pennsylvania, including magistrates and justices of the peace.

"Covered entity" means "covered entity" as defined in 45 CFR 160.103. (Def. added July 7, 2022, P.L.430, No.33)

"Department" means the Department of Health.

"Disclosure" means "disclosure" as defined in 45 CFR 160.103 and includes redisclosures and rereleases of information. (Def. added July 7, 2022, P.L.430, No.33)

"Drug" means (i) substances recognized in the official United States Pharmacopeia, or official National Formulary, or any supplement to either of them; and (ii) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (iii) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (iv) substances intended for use as a component of any article specified in clause (i), (ii) or (iii), but not including devices or their components, parts or accessories.

"Drug abuser" means any person who uses any controlled substance under circumstances that constitute a violation of the law.

"Drug dependent person" means a person who is using a drug, controlled substance or alcohol, and who is in a state of psychic or physical dependence, or both, arising from administration of that drug, controlled substance or alcohol on a continuing basis. Such dependence is characterized by behavioral and other responses which include a strong compulsion to take the drug, controlled substance or alcohol on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence. This definition shall include those persons commonly known as "drug addicts."

"Emergency medical services" includes all appropriate short term services for the acute effects of abuse and dependence which: (i) are available twenty-four hours a day; (ii) are community based and located so as to be quickly and easily accessible to patients; (iii) are affiliated with and constitute an integral (but not necessarily physical) part of the general medical services of a general hospital; and (iv) provide drug and alcohol withdrawal and other appropriate medical care and treatment, medical examination, diagnosis, and classification with respect to possible dependence, and referral for other treatment and rehabilitation.

"Federally assisted" means receiving Federal assistance as provided in 42 CFR 2.12(b) (relating to applicability). (Def. added July 7, 2022, P.L.430, No.33)

"Government attorney" means an attorney authorized to represent the Commonwealth or any political subdivision in any judicial proceeding within the scope of this act.

"Health care operations" means "health care operations" as defined in 45 CFR 164.501 (relating to definitions). (Def. added July 7, 2022, P.L.430, No.33)

"Inpatient services" includes all treatment and rehabilitation services for drug and alcohol abuse and dependence provided for a resident patient while the patient spends full time in a treatment institution including but not limited to a hospital, rehabilitative center or residential facility.

"Minor" means any person under the age of eighteen years. (Def. added Nov. 26, 1997, P.L.501, No.53)

"Outpatient services" means all treatment and rehabilitation services, including but not limited to medical, psychological, vocational and social rehabilitational services, for drug and alcohol abuse and dependence provided while the patient is not a resident of a treatment institution.

"Payment" means "payment" as defined in 45 CFR 164.501. (Def. added July 7, 2022, P.L.430, No.33)

"Prevention, intervention and treatment" means all appropriate forms of educational programs and services (including but not limited to radio, television, films, books, pamphlets, lectures, adult education and school courses); planning, coordinating, statistical, research, training, evaluation, reporting, classification, and other administrative, scientific or technical programs or services; and screening, diagnosis, treatment (emergency medical services, inpatient services, intermediate care and outpatient services), vocational rehabilitation, job training and referral, and other rehabilitation programs or services.

"Program" means "program" as defined in 42 CFR 2.11 (relating to definitions). (Def. added July 7, 2022, P.L.430, No.33)

"State plan" means the master State plan for the control, prevention, treatment, rehabilitation, research, education and training aspects of drug and alcohol abuse and dependence problems.

"Treatment" means "treatment" as defined in 45 CFR 164.501. (Def. added July 7, 2022, P.L.430, No.33)

"Use" means "use" as defined in 45 CFR 160.103. (Def. added July 7, 2022, P.L.430, No.33)

"Welfare assistance" means "assistance" as defined in section 402 of the Public Welfare Code and "State Blind Pension" as defined by section 502 of the Public Welfare Code.

(2 amended Dec. 20, 1985, P.L.529, No.119)

Compiler's Note: Section 3 of Act 33 of 2022 provided that the Department of Drug and Alcohol Programs shall not have the authority to promulgate or enforce a regulation that restricts any disclosure of records or information that is permitted by Act 33.

Section 3. Council Established.--(a) There is hereby established a Pennsylvania Advisory Council on Drug and Alcohol Abuse which shall be recognized as the advisory council to the Department of Health for drug and alcohol programs.

(b) The council shall be composed of the Secretary of Health, or his designee, who shall serve as chairman of the council, and eight other members who shall be appointed by the Governor in accordance with the following:

(1) Four members shall have substantial training or experience in the fields of drug or alcohol prevention, intervention, rehabilitation, treatment or enforcement.

(2) One member shall be an individual with a prior history of drug and alcohol dependency.

(3) One member shall have no connection with or experience in drug or alcohol prevention, intervention, rehabilitation, treatment or enforcement.

(4) Two members shall be from the public at large. To the extent possible, all geographic areas of this Commonwealth shall be represented. Officers and employees of the Commonwealth may be appointed as members of the council. Each member of the council, who is not otherwise an officer or employee of the Commonwealth, when actually engaged in official meetings or otherwise in the performance of his official duties as directed by the chairman, shall receive reimbursement for expenses incurred and per diem compensation at a rate to be set by the Executive Board.

(c) A majority of the members shall constitute a quorum for the purpose of conducting the business of the council, and exercising all of its powers. A vote of the majority of the members present shall be sufficient for all actions of the council.

(d) The council shall have the power to prescribe, amend and repeal bylaws, procedures governing the manner in which the business of the body is conducted and the manner in which the powers granted to it are exercised.

(e) The Department of Health shall seek the written advice and consultation of the council in the following areas:

(1) The development and implementation of the State plan for the control, prevention, intervention, treatment, rehabilitation, research, education and training aspects of drug and alcohol abuse and dependency problems.

(2) The promulgation by the Department of Health of any regulations necessary to carry out the purposes of this act.

(3) The establishment of funding priorities for drug and alcohol programs.

(4) The allocation of funds for the control, prevention, intervention, treatment, rehabilitation, research or training aspects of drug and alcohol abuse and dependency problems.

(5) Policies pertaining to the collection and dissemination of data and statistics pertaining to drug and alcohol abuse and dependency.

(f) The initial terms of the eight appointed members of the council appointed hereafter shall be as follows:

(1) Three members for a term of three years.

(2) Three members for a term of two years.

(3) Two members for a term of one year.

(g) The terms of all members following initial appointment shall be for three years. No member shall serve more than two consecutive terms. A member appointed to replace a member who has resigned, died or become otherwise disqualified shall be appointed to fill the unexpired term.

(h) The council shall meet at least six times annually.

(i) The department shall submit to the council reports, on a quarterly basis, of activities of any task force or ad hoc committee designated by the Secretary of Health to advise the department on drug and alcohol issues. A representative from each advisory task force and ad hoc committee may attend council meetings.

(3 amended Dec. 20, 1985, P.L.529, No.119)

Section 4. Department's Powers and Responsibilities.--(4 repealed July 9, 2010, P.L.348, No.50)

Section 5. Admissions and Commitments.--Except as provided in section 12.1 of this act, admissions and commitments to treatment facilities may be made according to the procedural admission and commitment provisions of the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act."

(5 amended Nov. 26, 1997, P.L.501, No.53)

Section 6. Drug or Alcohol Abuse Services in Correctional Institutions, Juvenile Detention Facilities and on Probation and Parole.--(a) The services established by this act shall be used by the Department of Corrections and the Department of Public Welfare for drug and alcohol abusers or drug and alcohol dependent offenders, including juveniles, placed on work release, probation, parole, or other conditional release. The department shall coordinate the development of and encourage State and appropriate local agencies and departments including the Department of Corrections and Board of Probation and Parole, pursuant to the State plan, to establish community based drug and alcohol abuse treatment services and of drug and alcohol abuse treatment services in State and county correctional institutions.

Medical detoxification and treatment shall be provided for persons physically dependent upon alcohol or controlled

substances at correctional institutions and juvenile detention facilities or in available appropriate medical facilities.

(b) The conditional release of any drug or alcohol abuser or drug or alcohol dependent person convicted of any Commonwealth offense may be conditioned on the person's agreement to periodic urinalysis or other reasonable means of detecting controlled substances or alcohol within the body.

(c) The Department of Corrections and Board of Probation and Parole and appropriate local agencies may transfer an offender placed on conditional release from one treatment service to another depending upon his response to treatment. The decision whether to retain or to restrict or to revoke probation or parole or other conditional release after failure to conform to a schedule for rehabilitation shall be made on the basis of what is most consistent with both the rehabilitation of the individual and the safety of the community. All reasonable methods of treatment shall be used to prevent relapses and to promote rehabilitation. The department shall provide periodic reports and recommendations to the Department of Corrections and Board of Probation and Parole and appropriate local agencies on persons being treated pursuant to this section.

(6 amended Dec. 20, 1985, P.L.529, No.119)

Compiler's Note: The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Section 7. Retention of Civil Rights and Liberties.--A person receiving care or treatment under the provisions of this act shall retain all of his civil rights and liberties except as provided by law.

Section 8. Confidentiality of Records.--(a) A complete medical, social, occupational, and family history shall be obtained as part of the diagnosis, classification and treatment of a patient pursuant to this act. Copies of all pertinent records from other agencies, practitioners, institutions, and medical facilities shall be obtained in order to develop a complete and permanent confidential personal history for purposes of the patient's treatment.

(b) (1) Patient records (including all records relating to any commitment proceeding), except patient records subject to subsection (d), prepared or obtained pursuant to this act, and all information contained therein, may not be disclosed without the patient's consent, except:

(i) to medical personnel exclusively for purposes of diagnosis and treatment of the patient;

(ii) to government or other officials exclusively for the purpose of obtaining benefits due the patient as a result of his drug or alcohol abuse or drug or alcohol dependence except that in emergency medical situations where the patient's life is in immediate jeopardy, patient records may be released without the patient's consent to proper medical authorities solely for the purpose of providing medical treatment to the patient; or

(iii) to a covered entity or a covered entity's business associate that makes the use, disclosure or request for disclosure in accordance with 45 CFR Pt. 164 Subpt. E (relating to privacy of individually identifiable health information).

(2) Disclosure may be made for purposes unrelated to such treatment or benefits only upon an order of a court of common pleas after application showing good cause therefor. In determining whether there is good cause for disclosure, the

court shall weigh the need for the information sought to be disclosed against the possible harm of disclosure to the person to whom such information pertains, the physician-patient relationship, and to the treatment services, and may condition disclosure of the information upon any appropriate safeguards. No such records or information may be used to initiate or substantiate criminal charges against a patient under any circumstances.

((b) amended July 7, 2022, P.L.430, No.33)

(c) (1) Except as provided under subsection (d) and section 12(b), patient records and all information contained therein relating to drug or alcohol abuse or drug or alcohol dependence prepared or obtained by a private practitioner, hospital, clinic, drug rehabilitation or drug treatment center shall remain confidential and may not be disclosed without a patient's consent except:

(i) when the patient is of the age of majority; or

(ii) if the patient is a minor, the patient consents to treatment under section 12(a). A minor patient who does not consent to medical treatment or counseling under section 12(a) may consent to the disclosure of records and information.

((1) amended July 7, 2022, P.L.430, No.33)

(2) Records and information subject to disclosure in accordance with paragraph (1) shall only be disclosed:

(i) to medical personnel exclusively for purposes of diagnosis and treatment of the patient;

(ii) to the parent or legal guardian of a minor or any other designee for which the patient has provided consent;

(iii) to government or other officials exclusively for the purpose of obtaining benefits due the patient as a result of his drug or alcohol abuse or drug or alcohol dependence; or

(iv) to a covered entity or a covered entity's business associate that makes the use, disclosure or request for disclosure in accordance with 45 CFR Pt. 164 Subpt. E.

((2) amended July 7, 2022, P.L.430, No.33)

(3) Notwithstanding any other provisions of this section, in emergency medical situations where the patient's life is in immediate jeopardy, patient records may be released without the patient's consent to proper medical authorities solely for the purpose of providing medical treatment to the patient.

(4) When a parent or legal guardian signs the consent for furnishing medical care and counseling on behalf of the minor and the minor refuses to sign a consent to release the treatment information to the minor's parent or legal guardian, the practitioner, hospital, clinic or drug and alcohol treatment facility providing treatment may only inform the parent or legal guardian of the facts relevant to reducing a threat to the minor or other individual in accordance with Federal or State law or any other information that is authorized under Federal or State law.

((c) amended June 28, 2018, P.L.349, No.47)

(d) Notwithstanding any other provision of law, patient records of a federally assisted program subject to 42 CFR Pt. 2 (relating to confidentiality of substance use disorder patient records) and all information contained in such patient records shall remain confidential and may be disclosed only as permitted by 42 CFR Pt. 2 and other applicable Federal law. ((d) added July 7, 2022, P.L.430, No.33)

Compiler's Note: Section 3 of Act 33 of 2022 provided that the Department of Drug and Alcohol Programs shall not have the authority to promulgate or enforce a regulation

that restricts any disclosure of records or information that is permitted by Act 33.

Section 9. Welfare.--(a) Drug and alcohol abuse and dependence shall, for the purpose of all State welfare programs be regarded as a major health and economic problem.

(b) State agencies charged with administering such welfare programs shall take action to reduce the incidence of financial indigency and family disintegration caused by drug and alcohol abuse and dependence, and treatment and rehabilitation services shall be provided for those persons enrolled in welfare programs whose financial eligibility for such assistance results, in part or in whole, from drug and alcohol dependence.

(c) Persons otherwise eligible for such welfare assistance shall not be ineligible for such assistance because of drug and alcohol abuse and dependence unless they refuse to accept available treatment and rehabilitation services. Any person whose financial eligibility for such assistance results in whole or in part, from drug and alcohol abuse or dependence shall be provided appropriate treatment and rehabilitation services. Upon receipt of substantial evidence of such alcohol or drug dependency or abuse, the Department of Public Welfare shall refer said welfare recipient to the mental health-mental retardation program of the recipient's catchment area or to any other approved treatment program, which shall provide an appropriate examination. Treatment and rehabilitation services will be deemed to be necessary and will be considered to be available upon a certification by the administrator of the community mental health-mental retardation program for the catchment area in which the recipient resides that: (i) the recipient's financial eligibility for such assistance results in whole or in part from drug or alcohol abuse or dependence, (ii) the services will more likely than not be appropriate for the recipient, and (iii) the services can accommodate the recipient. After such certification, participation by the recipient in the available program shall be a requirement for continuing eligibility for such assistance, in the absence of good cause for nonparticipation.

(d) Any recipient of welfare assistance whose inability to work or to participate in a work training program is the result of drug and alcohol abuse or dependence shall be excused from such participation only on condition that he accept appropriate treatment and rehabilitation services made available to him and continue to participate until discharged by the director in charge of his program. Withdrawal from such program prior to proper discharge shall constitute reason to discontinue welfare assistance.

Compiler's Note: The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Section 10. General.--Drug and alcohol abuse or dependence shall be regarded as a health problem, sickness, physical and mental illness, disease, disability, or similar term, for purposes of all legislation relating to health, welfare, and rehabilitation programs, services, funds and other benefits.

Section 11. Admission to Private and Public Hospitals.--Drug and alcohol abusers and drug and alcohol dependent persons shall be admitted to and treated in appropriate facilities of private and public hospitals on the basis of medical need and shall not be discriminated against because of their drug or alcohol abuse or dependence.

Section 12. Consent for Minors.--(a) Notwithstanding any other provisions of law, a minor who suffers from the use of a controlled or harmful substance may give consent to furnishing of medical care or counseling related to diagnosis or treatment. The consent of the parents or legal guardian of the minor shall not be necessary to authorize medical care or counseling related to such diagnosis or treatment. The consent of the minor shall be valid and binding as if the minor had achieved his majority. Such consent shall not be voidable nor subject to later disaffirmance because of minority. Any physician or any agency or organization operating a drug abuse program, who provides counseling to a minor who uses any controlled or harmful substance may, but shall not be obligated to inform the parents or legal guardian of any such minor as to the treatment given or needed.

(b) Notwithstanding a minor's refusal to provide consent, a parent or legal guardian may give consent for the minor.

(c) Notwithstanding the provisions of subsection (a), when a minor receiving medical treatment or counseling revokes consent to share information with a parent or legal guardian or terminates the treatment, notification of the revocation or termination shall be made to the parent or legal guardian.

(12 amended June 28, 2018, P.L.349, No.47)

Section 12.1. Commitment of Minors.--(a) A parent or legal guardian who has legal or physical custody of a minor may petition the court of common pleas of the judicial district where the minor is domiciled for commitment of the minor to involuntary drug and alcohol treatment services, including inpatient services, if the minor is incapable of accepting or unwilling to accept voluntary treatment. The petition shall set forth sufficient facts and good reason for the commitment. Such matters shall be heard by the division or a judge of the court assigned to conduct proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) involving children who have been alleged to be dependent or delinquent.

(b) Upon petition pursuant to subsection (a), the court:

(1) Shall appoint counsel for the minor.

(2) Shall order a minor who is alleged to have a dependency on drugs or alcohol to undergo a drug and alcohol assessment performed by a psychiatrist, a licensed psychologist with specific training in drug and alcohol assessment and treatment or a certified addiction counselor. Such assessment shall include a recommended level of care and length of treatment. Assessments completed by certified addiction counselors shall be based on the Department of Health approved drug and alcohol level of care criteria and shall be reviewed by a case management supervisor in a single county authority. The court shall hear the testimony of the persons performing the assessment under this subsection at the hearing on the petition for involuntary commitment.

(c) Based on the assessment defined in subsection (b), the court may order the minor committed to involuntary drug and alcohol treatment, including inpatient services, for up to forty-five days if all of the following apply:

(1) The court finds by clear and convincing evidence that: (i) the minor is a drug dependent person; and (ii) the minor is incapable of accepting or unwilling to accept voluntary treatment services.

(2) The court finds that the minor will benefit from involuntary treatment services.

(3) Where the court decision is inconsistent with the level of care and length of treatment recommended by the assessment,

the court shall set forth in its order a statement of facts and reasons for its disposition.

(d) A minor ordered to undergo treatment due to a determination pursuant to subsection (c) shall remain under the treatment designated by the court for a period of forty-five days unless sooner discharged. Prior to the end of the forty-five-day period, the court shall conduct a review hearing in accordance with subsection (c) for the purpose of determining whether further treatment is necessary. If the court determines that further treatment is needed, the court may order the minor recommitted to services for an additional period of treatment not to exceed forty-five days unless sooner discharged. The court may continue the minor in treatment for successive forty-five-day periods pursuant to determinations that the minor will benefit from services for an additional forty-five days.

(12.1 added Nov. 26, 1997, P.L.501, No.53)

Compiler's Note: See section 5 of Act 53 of 1997 in the appendix to this act for special provisions relating to coverage of drug and alcohol benefits.

Section 13. Financial Obligations.--(a) Except for minors, all persons receiving treatment under this act shall be subject to the provisions of Article V of the act of October 20, 1966 (P.L.96), known as the "Mental Health and Mental Retardation Act of 1966," in so far as it relates to liabilities and payments for services rendered by the Commonwealth.

(b) In the case of proceedings under section 12.1 of this act, unless the court finds that the parent or legal guardian is without financial resources, the parent or legal guardian shall be obligated for all of the following:

(1) Court costs.

(2) Counsel fees for the minor.

(3) The cost of assessment and treatment services.

(13 amended Nov. 26, 1997, P.L.501, No.53)

Section 14. Savings Provision.--The provisions of this act shall not affect any act done, liability incurred, or right accrued or vested, or affect any suit or prosecution pending to enforce any right or penalty or punish any offense under the authority of any act of Assembly, or part thereof, repealed by this act.

Section 15. Repeals.--(a) The following acts and parts of act are repealed to the extent indicated:

(1) Clause (4) of subsection (a) of section 616, act of April 29, 1959 (P.L.58), known as "The Vehicle Code," absolutely.

(2) Except sections 1 and 4, the act of August 20, 1953 (P.L.1212), entitled "An act providing for the study of the problems of alcoholism; the treatment, commitment, rehabilitation and protection of persons addicted to the excessive use of alcoholic beverages; conferring powers and imposing duties upon the courts and the Department of Health; and making an appropriation," absolutely.

(3) The act of January 14, 1952 (P.L.1868), entitled "An act providing for treatment and cure in designated State institutions of persons habitually addicted to the use of opiates, and for their admission to and care therein and the payment of the cost thereof; and making an appropriation," absolutely.

(b) All other acts and parts of acts, general, local and special, are repealed in so far as they are inconsistent herewith.

APPENDIX

----- Supplementary Provisions of Amendatory Statutes -----

1985, DECEMBER 20, P.L.529, NO.119

Section 2. Persons who are currently members of the Governor's Council On Drug and Alcohol Abuse, on the effective date of this act, shall serve as members of the Pennsylvania Advisory Council on Drug and Alcohol Abuse provided for in this act until their successors are duly appointed. All rules and regulations of the department and all bylaws of the council as of December 31, 1985, shall continue in effect until repealed or revised.

Section 3. This act, with respect to the Governor's Council On Drug and Alcohol Abuse, renamed the Pennsylvania Advisory Council on Drug and Alcohol Abuse, shall constitute the legislation required to reestablish an agency pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 4. The Governor's Council On Drug and Alcohol Abuse, renamed the Pennsylvania Advisory Council on Drug and Alcohol Abuse, shall continue together with its statutory functions and duties until December 31, 1991, when it shall terminate and go out of existence unless reestablished or continued by the General Assembly. Evaluation and review, termination, reestablishment and continuation of the agency beyond December 31, 1991, shall be conducted pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

1997, NOVEMBER 26, P.L.501, NO.53

Section 5. Nothing in this act shall relieve, restrict or expand the obligations of any insurer, health maintenance organization, third-party administrators, hospital plan corporation or health services plan corporation doing business in this Commonwealth with respect to the coverage of drug and alcohol benefits, as set forth in Article VI-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, section 2334 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act, or 40 Pa.C.S. Chs. 61 (relating to hospital plan corporations) and 63 (relating to professional health services plan corporations).

Explanatory Note. Act 53 amended sections 2, 5 and 13 and added section 12.1 of Act 63.