

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1180 Session of 2013

INTRODUCED BY VANCE, MENSCH, BAKER, WARD, STACK, GORDNER, VULAKOVICH, SOLOBAY, GREENLEAF, TOMLINSON, WAUGH, FERLO, BROWNE AND WILLIAMS, NOVEMBER 18, 2013

SENATOR VANCE, PUBLIC HEALTH AND WELFARE, AS AMENDED, MARCH 19, 2014

AN ACT

1 Providing for prescription drug monitoring; creating the
2 ~~Prescription Drug Monitoring~~ ABC-MAP Board; establishing the <--
3 Achieving Better Care by Monitoring All Prescriptions
4 Program; and providing for unlawful acts and penalties.

TABLE OF CONTENTS

- 5
6 Section 1. Short title.
7 Section 2. Purpose.
8 Section 3. Definitions.
9 Section 4. ~~Prescription Drug Monitoring~~ ABC-MAP Board. <--
10 Section 5. Powers and duties of board
11 Section 6. Establishment of program.
12 Section 7. Requirements for dispensers.
13 Section 8. Requirements for prescribers.
14 Section 9. Access to prescription information.
15 Section 10. Unlawful act and penalties.
16 Section 11. Program funding.
17 Section 12. Admissibility.
18 Section 13. Annual report.

1 Section 14. Regulations.

2 Section 15. Concurrent jurisdiction.

3 Section 16. Effective date.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Achieving
8 Better Care by Monitoring All Prescriptions Program (ABC-MAP)
9 Act.

10 Section 2. Purpose.

11 This act is intended to increase the quality of patient care
12 by giving prescribers and dispensers access to a patient's
13 prescriptive history through an electronic data system that will
14 alert medical professionals to potential dangers for purposes of
15 making treatment determinations. The act further intends that
16 patients will have a thorough and easily obtainable record of
17 prescriptions for purposes of making educated and thoughtful
18 health care decisions. Additionally, the act seeks to aid
19 regulatory and law enforcement agencies in the detection and
20 prevention of fraud, drug abuse and the criminal diversion of
21 controlled substances.

22 Section 3. Definitions.

23 The following words and phrases when used in this act shall
24 have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Board." The ~~Prescription Drug Monitoring~~ ABC-MAP Board <--
27 established in section 4.

28 "Controlled substance." A drug, substance or immediate
29 precursor included in the act of April 14, 1972 (P.L.233,
30 No.64), known as The Controlled Substance, Drug, Device and

1 Cosmetic Act, or the Controlled Substances Act (Public Law 91-
2 513, 84 Stat. 1236).

3 "Department." The Department of Health of the Commonwealth.

4 "Dispense." To deliver a controlled substance, other drug or
5 device to a patient by or pursuant to the lawful order of a
6 prescriber.

7 "Dispenser." A person lawfully authorized to dispense in
8 this Commonwealth, including mail order and Internet sales of
9 pharmaceuticals. The term does not include any of the following:

10 (1) A licensed health care facility ~~or long term care~~ <--
11 ~~pharmacy that distributes the controlled substance, other~~
12 ~~drug or device for the purpose of inpatient hospital or long~~
13 ~~term care facility administration~~ THAT DISTRIBUTES THE <--
14 CONTROLLED SUBSTANCE FOR THE PURPOSE OF ADMINISTRATION IN THE
15 LICENSED HEALTH CARE FACILITY.

16 (2) A correctional facility OR ITS CONTRACTORS if the <--
17 confined person cannot lawfully visit a prescriber outside
18 the correctional facility without being escorted by a
19 corrections officer.

20 (3) An authorized person who administers a controlled
21 substance, other drug or device.

22 (4) A wholesale distributor of a controlled substance.

23 (5) A licensed provider in the LIFE program.

24 (6) A provider of hospice as defined in THE act of July <--
25 19, 1979 (P.L.130, No.48), known as the Health Care
26 Facilities Act.

27 (7) A prescriber at a health care facility licensed by
28 this Commonwealth if the quantity of controlled substances
29 dispensed is limited to an amount adequate to treat the
30 patient for a maximum of 24 hours with not more than two 24-

1 hour cycles within any 15-day period.

2 (8) A veterinarian.

3 "Licensed health care facility." A health care facility that
4 is licensed under Article X of the act of June 13, 1967 (P.L.31,
5 No.21), known as the Public Welfare Code, or the act of July 19,
6 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

7 "LIFE program." The program of medical and supportive
8 services known as Living Independently For Elders.

9 "Prescriber." A person who is licensed, registered or
10 otherwise lawfully authorized to distribute, dispense or to
11 administer a controlled substance, other drug or device in the
12 course of professional practice or research in this
13 Commonwealth. The term does not include a veterinarian.

14 "Program." The Achieving Better Care by Monitoring All
15 Prescriptions Program (ABC-MAP) created in section 6.

16 Section 4. ~~Prescription Drug Monitoring~~ ABC-MAP Board. <--

17 (a) Creation.--The ~~Prescription Drug Monitoring~~ ABC-MAP <--

18 Board is created in the Department of Health. The board shall
19 ~~administer~~ ESTABLISH the program. The department shall ~~perform~~ <--

20 OPERATE THE PROGRAM BY PERFORMING budgetary, accounting, <--

21 procurement and other support services AS DIRECTED BY THE BOARD. <--

22 (b) Board composition.--The board shall consist of the
23 following individuals or their designees:

24 (1) Secretary of Health, who shall serve as chairperson.

25 (2) Secretary of Public Welfare.

26 (3) Secretary of Drug and Alcohol Programs.

27 (4) Secretary of State.

28 (5) The Insurance Commissioner.

29 (6) Secretary of Aging.

30 (7) The Commissioner of Pennsylvania State Police.

1 (8) The Attorney General.

2 (9) THE PHYSICIAN GENERAL, IF THE SECRETARY OF HEALTH IS <--
3 NOT A PHYSICIAN.

4 (c) Term limits.--Each member of the board shall serve for
5 the duration of their elected or appointed position.

6 (d) Meetings.--The board shall meet at least once a year for
7 the purpose of assessing the costs and benefits of the program
8 and effectuating any necessary changes. THE BOARD MAY MEET MORE <--
9 FREQUENTLY AT THE DISCRETION OF THE CHAIRPERSON.

10 Section 5. Powers and duties of board.

11 The board shall have the following powers and duties:

12 (1) Evaluate and secure a vendor of an electronic
13 prescription monitoring system for the purpose of carrying
14 out the provisions of this act.

15 (2) Appoint an advisory group comprised of dispensers,
16 prescribers, law enforcement, PATIENT AND PRIVACY ADVOCATES <--
17 and individuals with expertise considered important to the
18 operation of the program. All members shall have unique
19 perspectives and will provide input and recommendations to
20 the board regarding the establishment and maintenance of the
21 program. The advisory group shall not exceed twelve members.

22 ~~(3) Modify the list of required controlled substances to <--~~
23 ~~be reported based on the benefit to the citizens of this~~
24 ~~Commonwealth.~~

25 (3) PROVIDE NOTICE TO PATIENTS THAT INFORMATION <--
26 REGARDING PRESCRIPTIONS FOR CONTROLLED SUBSTANCES IS BEING
27 COLLECTED BY THE ABC-MAP PROGRAM. THE MANNER OF NOTICE MAY BE
28 DETERMINED BY THE BOARD WITH THE ADVICE OF THE ADVISORY
29 GROUP.

30 (4) Phase in an enforcement process so that dispensers

1 and prescribers may transition and have adequate time to make
2 the necessary changes to their operating systems.

3 (5) Develop protocols and policies to:

4 (i) Require more frequent reporting of data should
5 technology permit and so long as there is little or no
6 fiscal impact to the Commonwealth or those reporting. ANY <--
7 CHANGE IN THE FREQUENCY OF REPORTING SHALL BE MADE IN
8 COLLABORATION WITH THE BOARD OF PHARMACY AND THE BOARD OF
9 PHARMACY'S MEMBERS TO ENSURE THAT A PHARMACY IS ABLE TO
10 ACCOMMODATE THE CHANGE.

11 (ii) Evaluate the information in the program.

12 (iii) Allow for authorized department personnel to
13 conduct internal reviews, analyses and interpret program
14 data.

15 (iv) Safeguard the release of information to
16 authorized users and department personnel and ensure the
17 privacy and confidentiality of patients and patient
18 information.

19 (v) Aid prescribers in identifying at-risk
20 individuals and referring them to drug addiction
21 treatment professionals and programs.

22 ~~(vi) Refer prescription monitoring information to <--~~
23 ~~law enforcement or the appropriate licensing board in the~~
24 ~~Department of State.~~

25 (VI) ESTABLISH PROFESSIONALLY DEVELOPED CRITERIA, <--
26 WITH THE ADVICE OF THE ADVISORY GROUP THAT GENERATES
27 REFERRALS OF PRESCRIPTION MONITORING INFORMATION TO LAW
28 ENFORCEMENT OR THE APPROPRIATE LICENSING BOARD IN THE
29 DEPARTMENT OF STATE ONLY IF THERE IS A PATTERN OF
30 IRREGULAR DATA DEVIATING FROM THE CLINICAL STANDARD.

1 (vii) Train, educate and instruct prescribers and
2 dispensers on the use of the system.

3 (viii) Permit individuals employed by prescribers
4 and dispensers to query the program as designees AND SET <--
5 EXPLICIT STANDARDS TO ENSURE THE SECURITY OF THE SYSTEM
6 WHEN A DESIGNEE IS INDICATED.

7 (ix) Keep pace with technological advances that
8 facilitate the interoperability of the program with other
9 states' prescription drug monitoring programs and
10 electronic health information systems.

11 (x) Evaluate the costs and benefits of the program.

12 (xi) Convene the advisory group at least annually.

13 (xii) ~~Operate~~ DIRECT THE DEPARTMENT TO OPERATE and <--
14 maintain the program on a daily basis.

15 (xiii) Review the program for the purpose of
16 compiling statistics, research and educational materials
17 and outreach.

18 Section 6. Establishment of program.

19 (a) General rule.--The board shall establish and oversee and
20 the department shall administer the Achieving Better Care by
21 Monitoring All Prescriptions Program.

22 (b) Program components.--This program shall:

23 (1) Provide an electronic web-based data system of
24 controlled substances prescribed and dispensed in this
25 Commonwealth.

26 (2) Be easily accessible by prescribers, dispensers and
27 patients.

28 (3) Provide training and support for those using the
29 data system.

30 (4) Contain processes for prescribers to refer patients

1 to substance abuse treatment.

2 ~~(5) Contain processes for referral of prescribers,~~ <--
3 ~~dispensers or patients to law enforcement or the appropriate~~
4 ~~licensing board if necessary.~~

5 (c) Program queries.--The program shall maintain a record of
6 database queries that contains all of the following:

7 (1) Identification of each person who requests or
8 receives information from the database.

9 (2) Information provided to each person.

10 (3) Date and time the information is requested and
11 provided.

12 (d) Record retention.--The board shall remove from the
13 program all identifying information more than ~~seven~~ FOUR years <--
14 old from the date of collection. The information shall be
15 destroyed unless a law enforcement agency or a professional
16 licensing or certification agency or board for prescribers or
17 dispensers has submitted a written request to the department for
18 retention of specific information. ~~All~~ THE INFORMATION MAY BE <--
19 KEPT FOR A PERIOD OF ONE YEAR AND ALL requests shall comply with
20 procedures adopted by the board.

21 (e) Good cause exception.--The program shall contain a good
22 cause exception for dispensers and prescribers who are unable to
23 submit the required data electronically and shall allow for the
24 manual submission of data if the dispenser or prescriber does
25 not have Internet access.

26 (F) EXPIRATION.--CURRENT PHARMACY REPORTING REQUIREMENTS TO <--
27 THE ATTORNEY GENERAL SHALL EXPIRE AND SHALL NO LONGER BE
28 ENFORCEABLE UPON THE FULL IMPLEMENTATION OF THE PROGRAM.

29 Section 7. Requirements for dispensers.

30 (a) Submission.--A dispenser shall, according to the format

1 determined by the board, electronically submit information to
2 the program regarding each controlled substance dispensed.

3 (b) Data elements.--All of the following information shall
4 be provided by a dispenser:

5 (1) Full name of the prescriber.

6 (2) Prescriber Drug Enforcement Agency (DEA)
7 registration number.

8 (3) Date prescription was written.

9 (4) Date prescription was dispensed.

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

12 (6) The National Drug Code.

13 ~~(7) Drug name and strength.~~ <--

14 ~~(8)~~ (7) Dosage quantity and days' supply. <--

15 ~~(9) Dispenser's name, employer,~~ (8) DEA registration <--
16 number and National Provider Identifier.

17 ~~(10)~~ (9) Method of payment for the prescription. <--

18 (c) Frequency.--A dispenser shall submit all information
19 required under subsection (b) to the program no later than 72
20 hours after dispensing a controlled substance.

21 Section 8. Requirements for prescribers.

22 (a) Program query.--A prescriber shall query the program:

23 (1) for each ~~new patient~~ PATIENT THE FIRST TIME THE <--
24 PATIENT IS PRESCRIBED A CONTROLLED SUBSTANCE BY THE
25 PRESCRIBER for purposes of establishing a base line and a
26 thorough medical record; and

27 (2) if a prescriber believes or has reason to believe,
28 using sound clinical judgment, that a patient may be abusing
29 or diverting drugs.

30 (b) Medical record entries.--A prescriber shall indicate the

1 information obtained from the program in the patient's medical
2 record if:

- 3 (1) the individual is a new patient; or
- 4 (2) the prescriber determines a drug should not be
5 prescribed or furnished to a patient based upon the
6 information from the program.

7 (c) Prescriber designee.--Prescribers may designate
8 employees for purposes of accessing the program according to
9 standards established by the board.

10 (D) NONVIOLATION.--A PRESCRIBER OR DISPENSER WHO, USING A <--
11 SOUND STANDARD OF CARE IN THE EXERCISE OF CLINICAL JUDGMENT,
12 DOES NOT BELIEVE THAT A PATIENT IS ABUSING OR DIVERTING
13 CONTROLLED SUBSTANCES SHALL NOT BE IN VIOLATION OF THIS ACT FOR
14 NOT SEEKING OR OBTAINING INFORMATION FROM THE PROGRAM PRIOR TO
15 PRESCRIBING OR DISPENSING SO LONG AS THE PRESCRIBER OR DISPENSER
16 IS OTHERWISE IN COMPLIANCE.

17 Section 9. Access to prescription information.

18 (a) Confidentiality.--Except as set forth in subsection (b),
19 prescription information submitted to the program and records of
20 requests to query the data shall be confidential and not subject
21 to disclosure under the act of February 14, 2008 (P.L.6, No.3),
22 known as the Right-to-Know Law.

23 (b) Authorized users.--The following individuals may query
24 the program according to procedures determined by the board and
25 with the following limitations:

- 26 (1) Prescribers may query the program for:
 - 27 (i) an existing patient; and
 - 28 (ii) prescriptions written using the prescriber's
29 own Drug Enforcement Agency number.
- 30 (2) Dispensers may query the program for a current

1 patient to whom the dispenser is dispensing or considering
2 dispensing any controlled substance

3 ~~(3) Federal and State law enforcement officials may~~ <--
4 ~~query the program for:~~

5 ~~(i) schedule II controlled substances as indicated~~

6 (3) (I) FEDERAL AND STATE LAW ENFORCEMENT OFFICIALS MAY <--
7 QUERY THE PROGRAM FOR:

8 (A) SCHEDULE II CONTROLLED SUBSTANCES AS
9 INDICATED in the act of April 14, 1972 (P.L.233,
10 No.64), known as The Controlled Substance, Drug,
11 Device and Cosmetic Act and in the manner determined
12 by the Pennsylvania Attorney General pursuant to 28
13 Pa. Code § 25.131 (relating to every dispensing
14 practitioner); and

15 ~~(ii) all other schedules as long as a search warrant~~ <--
16 ~~is provided.~~

17 (B) ALL OTHER SCHEDULES UPON RECEIPT OF A COURT <--
18 ORDER. UPON RECEIPT OF A MOTION UNDER THIS CLAUSE,
19 THE COURT MAY ENTER AN EX PARTE ORDER GRANTING THE
20 MOTION IF THE LAW ENFORCEMENT AGENCY HAS DEMONSTRATED
21 BY A PREPONDERANCE OF THE EVIDENCE THAT:

22 (I) THE MOTION PERTAINS TO A PERSON WHO IS
23 THE SUBJECT OF AN ACTIVE CRIMINAL INVESTIGATION
24 WITH A REASONABLE LIKELIHOOD OF SECURING AN
25 ARREST OR PROSECUTION IN THE FORESEEABLE FUTURE;
26 AND

27 (II) THERE IS REASONABLE SUSPICION THAT A
28 CRIMINAL ACT HAS OCCURRED.

29 (II) DATA OBTAINED UNDER THIS PARAGRAPH MAY ONLY BE
30 USED BY A LAW ENFORCEMENT OFFICIAL TO ESTABLISH PROBABLE

1 CAUSE TO OBTAIN A SEARCH WARRANT OR ARREST WARRANT.

2 (4) A grand jury may query the program IF investigating <--
3 a criminal violation of a law governing controlled
4 substances.

5 (5) Approved department personnel may query the program
6 for the purpose of:

7 (i) conducting internal reviews related to
8 controlled substance laws; or

9 (ii) engaging in the analysis of controlled
10 substance prescription information as part of the
11 assigned duties and responsibilities of employment.

12 (6) Designated representatives from the Commonwealth or
13 out-of-State agency or board responsible for licensing or
14 certifying prescribers or dispensers whose professional
15 practice was or is regulated by that agency or board for the
16 purpose of conducting administrative investigations or
17 proceedings.

18 (7) Personnel from the Department of Public Welfare
19 engaged in the administration of the medical assistance
20 program.

21 (8) Personnel from the Insurance Department engaged in
22 the administration of the Children's Health Insurance Program
23 (CHIP).

24 (9) Personnel from the Department of Aging engaged in
25 the administration of the Pharmaceutical Assistance Contract
26 for the Elderly (PACE) and the Pharmaceutical Assistance
27 Contract for the Elderly Needs Enhancement Tier (PACENET)
28 programs.

29 (10) A medical examiner or county coroner for the
30 purpose of investigating the death of the individual being

1 queried.

2 (11) A prescription drug monitoring official, DISPENSER <--
3 OR PRESCRIBER of a state with which this Commonwealth has an
4 interoperability agreement.

5 (12) Upon providing evidence of identity and within six
6 months from the date of the request, an individual who is the
7 recipient of a controlled substance prescription entered into
8 the program, the individual's parent or guardian if the
9 individual is under 18 years of age or the individual's
10 health care power of attorney.

11 Section 10. Unlawful acts and penalties.

12 (a) Unlawful acts.--A person commits a misdemeanor of the
13 third degree if the person:

14 (1) Knowingly or intentionally releases, publishes or
15 otherwise makes available the information from the program
16 for purposes other than those specified in section 8.

17 (2) Obtains or attempts to obtain information from the
18 program for purposes other than those specified in section 8
19 or by misrepresentation or fraud.

20 (b) Civil violations.--

21 (1) Knowing, intentional and negligent release or use of
22 information from the program shall be subject to a civil
23 penalty of not less than \$2,500 for each offense.

24 (2) Other civil penalties shall be assessed in
25 accordance with department regulations.

26 (c) Collection of penalties.--The department shall be
27 entitled to reasonable attorney fees and costs for successful
28 collection actions and may:

29 (1) Collect any penalty imposed under this section and
30 which is not paid by bringing an action in the court of

1 common pleas of the county in which the person owing the debt
2 resides or in the county where the department is located.

3 (2) Seek legal assistance from the Attorney General,
4 the county or the district attorney of the county in which
5 the action is brought to collect the penalty.

6 (d) Additional sanctions.--A prescriber or dispenser
7 violating provisions of this act shall also be subject to
8 sanctions under the prescriber's or dispenser's professional
9 practice acts and by the appropriate licensing boards.

10 Section 11. Program funding.

11 (a) General rule.--The department may use the money
12 deposited in the General Fund and appropriated to the department
13 to carry out the requirements of this act.

14 (b) Civil penalties.--All civil penalties assessed under
15 this act shall be deposited in the General Fund and appropriated
16 to the department to implement the program.

17 (c) Data fees.--All costs associated with recording and
18 submitting data shall be assumed by the submitting dispenser.

19 (d) Other funding opportunities.--The board may direct the
20 department to pursue Federal funding and grants, both public and
21 private.

22 (e) Fees prohibited.--A dispenser or prescriber shall not be
23 required to pay a fee or tax specifically dedicated to the
24 establishment, operation or maintenance of the program.

25 (f) Transfer of funds.--Any funds currently appropriated
26 shall be redirected and used for the operation of the program.
27 Additional agencies utilizing the system, including licensing
28 boards, may also transfer funds to the department for operation
29 of the program.

30 Section 12. Admissibility.

1 (a) Use of data.--Except as provided in subsection (b), data
2 provided to, maintained in or accessed from the program that may
3 be identified to, or with a particular individual is not subject
4 to discovery, subpoena or similar compulsory process in any
5 civil, judicial, administrative or legislative proceeding, nor
6 shall any individual or organization with lawful access to the
7 data be compelled to testify with regard to the data.

8 (b) Exceptions.--The restrictions in subsection (a) do not
9 apply to:

10 (1) a criminal proceeding; or

11 (2) a civil, judicial or administrative action brought
12 to enforce the provisions of this act.

13 Section 13. Annual report.

14 Within two years of the effective date of this act and
15 annually thereafter, the board shall submit a report to the
16 General Assembly. The report shall also be made available on the
17 department's publicly accessible Internet website and shall
18 include all of the following:

19 (1) The number of times the program has been legally and
20 illegally accessed.

21 (2) The rate by which prescribers are utilizing the
22 program.

23 (3) Any impact on prescribing practices for controlled
24 substances.

25 (4) The cost effectiveness of the frequency of data
26 submission.

27 (5) The effectiveness of the interoperability with other
28 states and electronic medical records.

29 (6) Other information as determined by the board.

30 Section 14. Regulations.

1 The department shall promulgate regulations to implement the
2 provisions of this act.

3 Section 15. Concurrent jurisdiction.

4 The Attorney General shall have concurrent prosecutorial
5 jurisdiction with the county district attorney for violations of
6 this act.

7 Section 16. Effective date.

8 This act shall take effect as follows:

9 (1) Section 4 of the act shall take effect in 90 days.

10 (2) This section shall take effect immediately.

11 (3) The remainder of this act shall take effect June 30,
12 2015.