
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 CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
APRIL 28, 2014

AN ACT

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

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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 "ADDICTION SPECIALIST." A PHYSICIAN LICENSED BY THE STATE
27 BOARD OF MEDICINE AND CERTIFIED BY THE AMERICAN BOARD OF
28 ADDICTION MEDICINE.

<--

29 "Board." The ABC-MAP Board established in section 4.

30 "Controlled substance." A drug, substance or immediate

1 precursor included in the act of April 14, 1972 (P.L.233,
2 No.64), known as The Controlled Substance, Drug, Device and
3 Cosmetic Act, or the Controlled Substances Act (Public Law 91-
4 513, 84 Stat. 1236).

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

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

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

12 (1) A licensed health care facility that distributes the
13 controlled substance for the purpose of administration in the
14 licensed health care facility.

15 (2) A correctional facility or its contractors if the
16 confined person cannot lawfully visit a prescriber outside
17 the correctional facility without being escorted by a
18 corrections officer.

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

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

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

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

26 (7) A prescriber at a health care facility licensed by
27 this Commonwealth if the quantity of controlled substances
28 dispensed is limited to an amount adequate to treat the
29 patient for a maximum of 24 hours with not more than two 24-
30 hour cycles within any 15-day period.

1 (8) A veterinarian.

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

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

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

13 "Program." The Achieving Better Care by Monitoring All
14 Prescriptions Program (ABC-MAP) created in section 6.
15 Section 4. ABC-MAP Board.

16 (a) Creation.--The ABC-MAP Board is created in the
17 Department of Health. The board shall establish the program. The
18 department shall operate the program by performing budgetary,
19 accounting, procurement and other support services as directed
20 by the board.

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

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

24 (2) Secretary of Public Welfare.

25 (3) Secretary of Drug and Alcohol Programs.

26 (4) Secretary of State.

27 (5) The Insurance Commissioner.

28 (6) Secretary of Aging.

29 (7) The Commissioner of Pennsylvania State Police.

30 (8) The Attorney General.

1 (9) The Physician General, if the Secretary of Health is
2 not a physician.

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

5 (d) Meetings.--The board shall meet at least once a year for
6 the purpose of assessing the costs and benefits of the program
7 and effectuating any necessary changes. The board may meet more
8 frequently at the discretion of the chairperson.

9 Section 5. Powers and duties of board.

10 The board shall have the following powers and duties:

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

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

22 (3) Provide notice to patients that information
23 regarding prescriptions for controlled substances is being
24 collected by the ABC-MAP program AND THAT THE PATIENT HAS A <--
25 RIGHT TO ANNUALLY REVIEW AND CORRECT THE INFORMATION AT NO
26 CHARGE TO THE PATIENT. The manner of notice may be determined
27 by the board with the advice of the advisory group.

28 (4) Phase in an enforcement process so that dispensers
29 and prescribers may transition and have adequate time to make
30 the necessary changes to their operating systems.

1 (5) Develop protocols and policies to:

2 (i) Require more frequent reporting of data should
3 technology permit and so long as there is little or no
4 fiscal impact to the Commonwealth or those reporting. Any
5 change in the frequency of reporting shall be made in
6 collaboration with the Board of Pharmacy and the Board of
7 Pharmacy's members to ensure that a pharmacy is able to
8 accommodate the change.

9 (ii) Evaluate the information in the program.

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

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

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

20 (vi) Establish professionally developed criteria,
21 with the advice of the advisory group that generates
22 referrals of prescription monitoring information to ~~law~~ <--
23 ~~enforcement~~ or the appropriate licensing board in the
24 Department of State only ~~if~~ WHEN THE SYSTEM PRODUCES AN <--
25 ALERT THAT there is a pattern of irregular data deviating
26 from the clinical standard.

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

29 (viii) Permit individuals employed by prescribers
30 and dispensers to query the program as designees and set

1 explicit standards to ensure the security of the system
2 when a designee is indicated.

3 (ix) Keep pace with technological advances that
4 facilitate the interoperability of the program with other
5 states' prescription drug monitoring programs and
6 electronic health information systems.

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

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

9 (xii) Direct the department to operate and maintain
10 the program on a daily basis.

11 (xiii) Review the program for the purpose of
12 compiling statistics, research and educational materials
13 and outreach.

14 Section 6. Establishment of program.

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

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

19 (1) Provide an electronic ~~web-based~~ data system of <--
20 controlled substances prescribed and dispensed in this
21 Commonwealth.

22 (2) Be easily accessible by prescribers, dispensers and
23 patients.

24 (3) Provide training and support for those using the
25 data system.

26 (4) Contain processes for prescribers to refer patients
27 to substance abuse treatment.

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

30 (1) Identification of each person who requests or

1 receives information from the database.

2 (2) Information provided to each person.

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

5 (d) Record retention.--The board shall remove from the
6 program all identifying information more than ~~four~~ THREE years <--
7 old from the date of collection. The information shall be
8 destroyed unless a law enforcement agency or a professional
9 licensing or certification agency or board for prescribers or
10 dispensers has submitted a written request to the department for
11 retention of specific information FOR CAUSE. The information may <--
12 be kept for a AN ADDITIONAL period of one year and all requests <--
13 shall comply with procedures adopted by the board. THE <--
14 DEPARTMENT MAY NOT GRANT MORE THAN TWO EXTENSIONS REGARDING THE
15 RETENTION OF THE SAME IDENTIFIED SPECIFIC INFORMATION.

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

21 (f) Expiration.--Current pharmacy reporting requirements to
22 the Attorney General shall expire and shall no longer be
23 enforceable upon the full implementation of the program.

24 Section 7. Requirements for dispensers.

25 (a) Submission.--A dispenser shall, according to the format
26 determined by the board, electronically submit information to
27 the program regarding each controlled substance dispensed.

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

30 (1) Full name of the prescriber.

- 1 (2) Prescriber Drug Enforcement Agency (DEA)
- 2 registration number.
- 3 (3) Date prescription was written.
- 4 (4) Date prescription was dispensed.
- 5 (5) Full name, date of birth, gender and address of the
- 6 person for whom the prescription was written and dispensed.
- 7 (6) The National Drug Code.
- 8 (7) Dosage quantity and days' supply.
- 9 (8) DEA registration number and National Provider
- 10 Identifier.

11 (9) Method of payment for the prescription.

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

15 Section 8. Requirements for prescribers.

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

17 (1) for each patient the first time the patient is
18 prescribed a controlled substance by the prescriber for
19 purposes of establishing a base line and a thorough medical
20 record; and

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

24 (b) Medical record entries.--A prescriber shall indicate the
25 information obtained from the program in the patient's medical
26 record if:

27 (1) the individual is a new patient; or

28 (2) the prescriber determines a drug should not be
29 prescribed or furnished to a patient based upon the
30 information from the program.

1 (c) Prescriber designee.--Prescribers may designate
2 employees for purposes of accessing the program according to
3 standards established by the board. IN ASSIGNING A DESIGNEE, A <--
4 PRESCRIBER SHALL GIVE PREFERENCE TO A PROFESSIONAL NURSE
5 LICENSED BY THE STATE BOARD OF NURSING.

6 (d) Nonviolation.--A prescriber or dispenser who, using a
7 sound standard of care in the exercise of clinical judgment,
8 does not believe that a patient is abusing or diverting
9 controlled substances shall not be in violation of this act for
10 not seeking or obtaining information from the program prior to
11 prescribing or dispensing so long as the prescriber or dispenser
12 is otherwise in compliance.

13 Section 9. Access to prescription information.

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

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

22 (1) Prescribers may query the program for:
23 (i) an existing patient; and
24 (ii) prescriptions written using the prescriber's
25 own Drug Enforcement Agency number.

26 (2) Dispensers may query the program for a current
27 patient to whom the dispenser is dispensing or considering
28 dispensing any controlled substance. <--

29 (3) (i) Federal and State law enforcement officials may
30 query the program for:

1 (A) Schedule II controlled substances as
2 indicated in the act of April 14, 1972 (P.L.233,
3 No.64), known as The Controlled Substance, Drug,
4 Device and Cosmetic Act and in the manner determined
5 by the Pennsylvania Attorney General pursuant to 28
6 Pa. Code § 25.131 (relating to every dispensing
7 practitioner); and

8 (B) all other schedules upon receipt of a court
9 order. Upon receipt of a motion under this clause,
10 the court may enter an ex parte order granting the
11 motion if the law enforcement agency has demonstrated
12 by a preponderance of the evidence that:

13 (I) the motion pertains to a person who is
14 the subject of an active criminal investigation
15 with a reasonable likelihood of securing an
16 arrest or prosecution in the foreseeable future;
17 and

18 (II) there is reasonable suspicion that a
19 criminal act has occurred.

20 (ii) Data obtained under this paragraph may only be
21 used by a law enforcement official to establish probable
22 cause to obtain a search warrant or arrest warrant.

23 (4) A grand jury may query the program if investigating
24 a criminal violation of a law governing controlled
25 substances.

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

28 (i) conducting internal reviews related to
29 controlled substance laws; or

30 (ii) engaging in the analysis of controlled

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

3 (6) Designated representatives from the Commonwealth or
4 out-of-State agency or board responsible for licensing or
5 certifying prescribers or dispensers whose professional
6 practice was or is regulated by that agency or board for the
7 purpose of conducting administrative investigations or
8 proceedings.

9 (7) Personnel from the Department of Public Welfare
10 engaged in the administration of the medical assistance
11 program.

12 (8) Personnel from the Insurance Department engaged in
13 the administration of the Children's Health Insurance Program
14 (CHIP).

15 (9) Personnel from the Department of Aging engaged in
16 the administration of the Pharmaceutical Assistance Contract
17 for the Elderly (PACE) and the Pharmaceutical Assistance
18 Contract for the Elderly Needs Enhancement Tier (PACENET)
19 programs.

20 (10) A medical examiner or county coroner for the
21 purpose of investigating the death of the individual being
22 queried.

23 (11) A prescription drug monitoring official, dispenser
24 or prescriber of a state with which this Commonwealth has an
25 interoperability agreement.

26 (12) Upon providing evidence of identity and within six
27 months from the date of the request, an individual who is the
28 recipient of a controlled substance prescription entered into
29 the program, the individual's parent or guardian if the
30 individual is under 18 years of age or the individual's

1 health care power of attorney.

2 Section 10. Unlawful acts and penalties.

3 (a) Unlawful acts.--A person commits a misdemeanor of the
4 ~~third~~ SECOND degree if the person: <--

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

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

11 (B) CRIMINAL VIOLATIONS.--EACH VIOLATION UNDER SUBSECTION <--
12 (A) SHALL CONSTITUTE A SEPARATE OFFENSE.

13 ~~(b)~~ (C) Civil violations.-- <--

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

17 (2) Other civil penalties shall be assessed in
18 accordance with department regulations.

19 ~~(e)~~ (D) Collection of penalties.--The department shall be <--
20 entitled to reasonable attorney fees and costs for successful
21 collection actions and may:

22 (1) Collect any penalty imposed under this section and
23 which is not paid by bringing an action in the court of
24 common pleas of the county in which the person owing the debt
25 resides or in the county where the department is located.

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

29 ~~(d)~~ (E) Additional sanctions.--A prescriber or dispenser <--
30 violating provisions of this act shall also be subject to

1 sanctions under the prescriber's or dispenser's professional
2 practice acts and by the appropriate licensing boards.

3 Section 11. Program funding.

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

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

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

12 (d) Other funding opportunities.--The board may direct the
13 department to pursue Federal funding and grants, both public and
14 private.

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

18 (f) Transfer of funds.--Any funds currently appropriated
19 shall be redirected and used for the operation of the program.
20 Additional agencies utilizing the system, including licensing
21 boards, may also transfer funds to the department for operation
22 of the program.

23 Section 12. Admissibility.

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

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

3 (1) a criminal proceeding; or

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

6 Section 13. Annual report.

7 Within two years of the effective date of this act and
8 annually thereafter, the board shall submit a report to the
9 General Assembly. The report shall also be made available on the
10 department's publicly accessible Internet website and shall
11 include all of the following:

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

14 (2) The rate by which prescribers are utilizing the
15 program.

16 (3) Any impact on prescribing practices for controlled
17 substances.

18 (4) The cost effectiveness of the frequency of data
19 submission.

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

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

23 Section 14. Regulations.

24 The department shall promulgate regulations to implement the
25 provisions of this act.

26 Section 15. Concurrent jurisdiction.

27 The Attorney General shall have concurrent prosecutorial
28 jurisdiction with the county district attorney for violations of
29 this act.

30 Section 16. Effective date.

1 This act shall take effect as follows:

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

3 (2) This section shall take effect immediately.

4 (3) The remainder of this act shall take effect June 30,

5 2015.