



nabp

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November 20, 2013

Honorable Joe Pitts
Chairman, Subcommittee on Health
Committee on Energy and Commerce
US House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Honorable Frank Pallone, Jr
Ranking Member, Subcommittee on Health
Committee on Energy and Commerce
US House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Chairman Pitts and Ranking Member Pallone:

The National Association of Boards of Pharmacy[®] (NABP[®]) regrets not being able to attend the November 20, 2013 United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Health hearing entitled, "Examining Public Health Legislation to Help Local Communities," but is pleased to provide the following written comment as it pertains to the discussion draft to amend and reauthorize the National All-Schedules Prescription Electronic Reporting (NASPER) program. NABP is the independent, international, and impartial Association that assists its member boards and jurisdictions in developing, implementing, and enforcing uniform standards for the purpose of protecting the public health.

NABP Comments and Recommendations:

As written, the NASPER discussion draft allows NASPER funds to be used to maintain and operate a prescription monitoring program (PMP) rather than just establishing or improving a PMP. NABP fully supports this major change from previous legislation. Several states have come within weeks of shutting down and one state delayed implementing its PMP for many months until funds became available. Additionally, the Purpose section of the bill now acknowledges use of PMP data by law enforcement and state regulatory/licensing agencies.

Finally, NABP wishes to note that though the requirements of this draft apply only to states that receive a grant and not to those states that support their PMP via other mechanisms, states that do not receive grants may still be affected (eg, a state that receives grant is required to be interoperable with one or more border states whether the border state has a grant or not).

Comments on particularly important provisions follow:

1. (c)(1)(B)(iii) – This section requires interoperability with at least one state. This seems to conflict with Section (c)(3) which can be interpreted to require interoperability with all border states. See next item.

(c)(3) Interoperability. As interpreted, if a state applies for a grant and has a border state(s) with a PMP, the state must be interoperable or have a plan and a timeline to achieve interoperability. This appears to necessitate every state (that applies for a grant) to be interoperable with every border state. There are statutory and political issues that will be problematic in some states. NABP believes that the language should allow an exemption of this requirement if achieving interoperability (with a particular state) is beyond the control of the state applying for the grant. However, if the state submitting the application cannot or will not share data with another PMP, that state should be disqualified from receiving funds.

2. (f)(1) – This section states, “. . . a State may disclose information from the database . . . **only** in response to a request by—.” Does this language limit the entities to whom a state may disclose information, if the state receives grant funds? If so, NABP suggests that the text be revised to read “. . . a State may disclose information from the database . . . **only** in response to a request **only** by—.”

Please note that a number of states allow access to several entities that are not described in this list (eg, Medicaid staff, workers’ compensation staff, mental health workers, etc).

Alternatively, if this section is interpreted to mean that disclosures are only provided pursuant to a request (as opposed to unsolicited), then this language could conflict with Section (f)(2)(A), which requires identification and notification to practitioners and dispensers of patients that may be involved in diversion or misuse of drugs. Thus, Section (f)(2)(A) seems to require unsolicited notification or disclosure of the identity of specific patients.

NABP is advocating for clarity in both sections.

3. (f)(1)(B) – This provision seems to allow law enforcement access only to controlled substances in Schedules II, III, and IV. Many states maintain data for Schedule V substances and a few non-controlled drugs as well. Is this the intent or should the language be broadened to cover any substance for which the state maintains prescriptions records?
4. (f)(1)(D) – This section permits agents of specific agencies to obtain data for research. Section (g)(2) could be interpreted that these agencies listed in Section (f)(1)(D) receive only nonidentifiable data or that they may receive data with person identities but may further release only de-identified data. NABP is requesting clarity on the intent and recommends that only de-identified/nonidentifiable data be released to anyone for research.
5. (f)(3) – This section requires a state that receives a grant to provide aggregate data to the secretary. NABP recommends that this be clarified as “de-identified” or “nonidentifiable”.
6. (f)(4) – Many universities and non-profit organizations seek de-identified data for legitimate research. This section seems to require that they obtain data from one of the organizations or agencies listed in Section (f)(1)(D). NABP recommends that the de-identified data be available

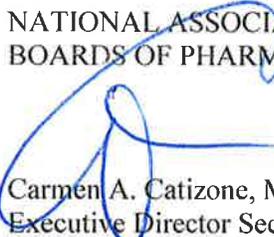
directly from the state PMP, subject to appropriate restrictions that limit the disclosure to legitimate scientific research.

7. Regarding Sections (k)(1) and (k)(2), which are part of the original NASPER language:
 - a. Since substantial negative impacts in Section (k)(1) have not been documented since 2005 when the original NASPER language was passed, NABP recommends this section be deleted.
 - b. Section (k)(2) requires a study of state PMPs' progress and the feasibility of certain new features. Much of this work is already documented and states are still making improvements in access and data quality each year. NABP does not believe there is a need to require one or more studies on these issues since studies are expensive and the progress is already occurring without federal oversight.
8. (l) – This section restates one of the original requirements but changes it from a “shall” to a “may.” This change will give the secretary more flexibility in awarding competitive grants under Title V to states. NABP agrees with this change.
9. (n)(8) – This section defines the term “State.” This should insure that the funds allocated are provided only to PMPs and not to other entities for purposes other than establishing, improving, or maintaining a state PMP. NABP agrees with this as defined.

NABP appreciates this opportunity to provide comments to the House Committee on Energy and Commerce, Subcommittee on Health. Please feel free to contact me with any questions at exec-office@nabp.net or via phone at 847/391-4400.

Sincerely,

NATIONAL ASSOCIATION OF
BOARDS OF PHARMACY



Carmen A. Catizone, MS, RPh, DPh
Executive Director Secretary