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June 21, 2011

The Honorable Gene DiGirolamo, Majority Chair
House Human Services Committee
49 East Wing
PO Box 202018
Harrisburg, PA 17120-2018

The Honorable Mark B. Cohen, Minority Chair
House Human Services Committee
127 Irvis Office Building
PO Box 202202
Harrisburg, PA 17120-2202

Dear Chairman DiGirolamo and Chairman Cohen,

Thank you for the opportunity to submit written testimony on House Bill 1651. Founded in 1920, the American Civil Liberties Union is one of the nation's oldest civil rights organizations, and ACLU activity in Pennsylvania dates to the 1930s. I submit this testimony on behalf of the 17,000 members of the ACLU of Pennsylvania.

HB 1651 creates a database of prescription drug users in Pennsylvania that will be administered by the Department of Drug and Alcohol Programs. It is essential that the legislation protect the privacy of all patients in Pennsylvania in creating such a database. It is apparent that Chairman DiGirolamo had privacy protections in mind when writing several provisions of the bill, and the ACLU of Pennsylvania applauds the chairman for being mindful of the privacy of patients in drafting the legislation. However, the bill can go further in providing appropriate privacy protections, and the American Civil Liberties Union of Pennsylvania opposes HB 1651 in its current form. We believe that it can be a better bill.

For public health purposes, there are two key groups of professionals who need access to the database- doctors and pharmacists. If a patient is abusing prescription medication, the patient's doctor is the most qualified person to refer the patient to appropriate treatment to end his or her addiction. Certainly, a doctor is more likely than a law enforcement official to address the abuse in a way that is caring and that increases the likelihood that the person receives appropriate treatment.

A pharmacist can also aid in detecting abuse. Of course, if the prescribing doctor has done his or her due diligence and reviewed the patient's information in the database, the doctor will likely note an excessive use of medication before the patient ever gets to the pharmacist. But a pharmacist provides a second pair of eyes on the patient's information

to evaluate potential abuse. A pharmacist could also provide a check on someone who is potentially forging prescriptions.

HB 1651 goes further, though, in providing access to the database. For example, the bill allows researchers to access the data. While the bill requires the identifying information of the patient to be redacted when a researcher reviews the database, that provides little comfort. This provision opens the door to non-medical professionals accessing the personal information of patients.

HB 1651 appropriately allows law enforcement to access the database only when conducting an investigation of a specific person or when investigating insurance fraud, Medicaid fraud, or Medicare fraud. However, this provision (page 9, lines 2-9) can be stronger. Law enforcement should only have access to the database after a finding of probable cause. Police officers cannot walk into a doctor's office and seize medical records without a finding of probable cause. The same should be true with the prescription drug database created by HB 1651.

At the hearing of this committee on June 16, a detective from Westmoreland County suggested that the database should be administered by the Office of the Attorney General and that local law enforcement should "not HAVE any undue restrictions on them" in accessing the database. This is a highly inappropriate suggestion. The database is not a constitution-free zone. Chairman DiGirolamo has done the right thing by limiting law enforcement access to the database and by tasking the Department of Drug and Alcohol Programs with administering it.

Finally, HB 1651 allows the department to flag potential addicts (page 12, lines 17-22), presenting privacy questions for patients. The department is in no position to conduct medical assessments from a distance. Assessing a patient's medical needs is the responsibility of a doctor.

The implementation of prescription drug databases has been controversial in part for the reasons cited above. There is legitimate concern that doctors will under prescribe medication out of fear of attracting the attention of law enforcement. In a related concern, it is possible that some patients will not seek care because they could be unfairly branded as drug abusers when, in fact, they are simply addressing legitimate health problems.

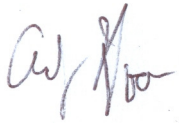
Too many eyes on the database, including and particularly law enforcement and the department, increase the likelihood that these predictions will come to fruition.

In reviewing HB 1651, it's clear that Chairman DiGirolamo had privacy interests and public health concerns in mind in several provisions of the bill. The ACLU of

Pennsylvania applauds the chairman for being mindful of these concerns. We also believe that the bill can go further in protecting patients' privacy and are hopeful that the conversation around this bill will continue. We urge the committee to revise HB 1651 with the suggestions outlined here.

Thank you for the opportunity to submit testimony on HB 1651. As always, you are welcome to contact me at anytime with questions and concerns on this or on any other civil liberties issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andy Hoover".

Andy Hoover
Legislative Director, ACLU of Pennsylvania

CC: House Human Services Committee