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HOUSE BILL NO. 1841

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend and reenact §§ 54.1-2522.1 and 54.1-2523 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2522.2, relating to the Prescription Monitoring Program; requirements for dispensers.

Patrons—Herring and Hodges

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2522.1 and 54.1-2523 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2522.2 as follows:

§ 54.1-2522.1. (Effective July 1, 2015) Requirements of prescribers.

A. Any prescriber who is licensed in the Commonwealth to treat human patients and is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription for a covered substance shall be registered with the Prescription Monitoring Program by the Department of Health Professions ~~upon filing an application for licensure or renewal of licensure, if the prescriber is not already registered.~~

B. Prescribers registered with the Prescription Monitoring Program shall, at the time of initiating a new course of treatment to a human patient that includes the prescribing of benzodiazepine or an opiate anticipated to last more than 90 consecutive days ~~and for which a treatment agreement is entered into,~~ request information from the Director for the purpose of determining what, if any, other covered substances are currently prescribed to the patient. In addition, any prescriber who holds a special identification number from the Drug Enforcement Administration authorizing the prescribing of controlled substances approved for use in opioid addiction therapy shall, prior to or as a part of execution of a treatment agreement with the patient, request information from the Director for the purpose of determining what, if any, other covered substances the patient is currently being prescribed. Nothing in this section shall prohibit prescribers from making additional periodic requests for information from the Director as may be required by routine prescribing practices.

C. The Secretary of Health and Human Resources may identify and publish a list of benzodiazepines or opiates that have a low potential for abuse by human patients. Prescribers who prescribe such identified benzodiazepines or opiates shall not be required to meet the provisions of subsection B. In addition, a prescriber shall not be required to meet the provisions of subsection B if the course of treatment arises from pain management relating to dialysis or cancer treatments.

§ 54.1-2522.2. Requirements for dispensers.

A. Every dispenser licensed by the Board of Pharmacy pursuant to Article 3 (§ 54.1-3310 et seq.) of Chapter 33 shall be registered with the Prescription Monitoring Program.

B. Dispensers registering with the Prescription Monitoring Program shall, prior to dispensing benzodiazepine or an opiate expected to last more than 90 consecutive days, request information from the Director for the purpose of determining what, if any, covered substances have been dispensed to the patient. Nothing in this section shall prohibit a dispenser from making additional periodic requests for information from the Director as may be required to establish the validity of a prescription or dispensing history for a patient.

§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of Director.

A. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 15 of § 2.2-3705.5. Further, the Director shall only have discretion to disclose any such information as provided in subsections B and C.

B. Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable federal law and regulations, the Director shall disclose the following:

1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or prescriber to an agent who has completed the Virginia State Police Drug Diversion School designated by the superintendent of the Department of State Police or designated by the chief law-enforcement officer of any county, city, or town or campus police department to conduct drug diversion investigations pursuant to § 54.1-3405.

59 2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific
60 person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a
61 health regulatory board; information relevant to a disciplinary proceeding before a health regulatory
62 board or in any subsequent trial or appeal of an action or board order to designated employees of the
63 Department of Health Professions; or to designated persons operating the Health Practitioners'
64 Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.).

65 3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that
66 has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of
67 Title 19.2.

68 4. Information relevant to a specific investigation of a specific recipient, dispenser, or prescriber to
69 an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.

70 C. In accordance with the Department's regulations and applicable federal law and regulations, the
71 Director may, in his discretion, disclose:

72 1. Information in the possession of the program concerning a recipient who is over the age of 18 to
73 that recipient. The information shall be mailed to the street or mailing address indicated on the recipient
74 request form.

75 2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of
76 establishing the treatment history of the specific recipient when such recipient is either under care and
77 treatment by the prescriber or the prescriber is initiating treatment of such recipient. In a manner
78 specified by the Director in regulation, notice shall be given to patients that information may be
79 requested by the prescriber from the Prescription Monitoring Program.

80 3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription
81 history to assist the dispenser in determining the validity of a prescription in accordance with
82 § 54.1-3303 *or determining what, if any, covered substances have been dispensed to the patient,*
83 *pursuant to subsection B of § 54.1-2522.2,* when the recipient is seeking a covered substance from the
84 dispenser or the facility in which the dispenser practices. In a manner specified by the Director in
85 regulation, notice shall be given to patients that information may be requested by the dispenser from the
86 Prescription Monitoring Program.

87 4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or
88 prescriber to other regulatory authorities concerned with granting, limiting or denying licenses,
89 certificates or registrations to practice a health profession when such regulatory authority licenses such
90 dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory
91 authority.

92 5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a
93 participating provider in the Virginia Medicaid program or information relevant to an investigation
94 relating to a specific recipient who is currently eligible for and receiving or who has been eligible for
95 and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the
96 Attorney General or to designated employees of the Department of Medical Assistance Services, as
97 appropriate.

98 6. Information relevant to determination of the cause of death of a specific recipient to the designated
99 employees of the Office of the Chief Medical Examiner.

100 7. Information for the purpose of bona fide research or education to qualified personnel; however,
101 data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted
102 or redacted from such information prior to disclosure. Further, release of the information shall only be
103 made pursuant to a written agreement between such qualified personnel and the Director in order to
104 ensure compliance with this subdivision.

105 8. Information relating to prescriptions for covered substances issued by a specific prescriber, which
106 have been dispensed and reported to the Program, to that prescriber.

107 D. The Director may enter into agreements for mutual exchange of information among prescription
108 monitoring programs in other jurisdictions, which shall only use the information for purposes allowed by
109 this chapter.

110 E. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the
111 divulging of confidential records relating to investigative information.

112 F. Confidential information that has been received, maintained or developed by any board or
113 disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for
114 discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action
115 for damages arising out of the provision of or failure to provide services. However, this subsection shall
116 not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247
117 et seq.) of Chapter 7 of Title 18.2.

118 **2. That the provisions of this act amending subsection A of § 54.1-2522.1 of the Code of Virginia**
119 **and subsection A of § 54.1-2522.2, as created by this act, shall become effective on January 1,**
120 **2016.**