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SENATE BILL NO. 1393

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Education and Health
 on February 5, 2015)

(Patron Prior to Substitute—Senator Saslaw)

A BILL to amend and reenact §§ 53.1-10, 53.1-233, 54.1-3301, and 54.1-3410.2 of the Code of Virginia, relating to pharmacists; compounding of drugs for use in executions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-10, 53.1-233, 54.1-3301, and 54.1-3410.2 of the Code of Virginia are amended and reenacted as follows:

§ 53.1-10. Powers and duties of Director.

The Director shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its system of state correctional facilities;

2. To implement the standards and goals of the Board as formulated for local and community correctional programs and facilities and lock-ups;

3. To employ such personnel and develop and implement such programs as may be necessary to carry out the provisions of this title, subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, and within the limits of appropriations made therefor by the General Assembly;

4. To establish and maintain a general system of schools for persons committed to the institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8. Such system shall include, as applicable, elementary, secondary, post-secondary, career and technical education, adult, and special education schools.

a. The Director shall employ a Superintendent who will oversee the operation of educational and vocational programs in all institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8 operated by the Department. The Department shall be designated as a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid to public education.

b. When the Department employs a teacher licensed by the Board of Education to provide instruction in the schools of the correctional centers, the Department of Human Resource Management shall establish salary schedules for the teachers which endeavor to be competitive with those in effect for the school division in which the correctional center is located.

c. The Superintendent shall develop a functional literacy program for inmates testing below a selected grade level, which shall be at least at the twelfth grade level. The program shall include guidelines for implementation and test administration, participation requirements, criteria for satisfactory completion, and a strategic plan for encouraging enrollment in college or an accredited vocational training program or other accredited continuing education program.

d. For the purposes of this section, the term "functional literacy" shall mean those educational skills necessary to function independently in society, including, but not limited to, reading, writing, comprehension, and arithmetic computation.

e. In evaluating a prisoner's educational needs and abilities pursuant to § 53.1-32.1, the Superintendent shall create a system for identifying prisoners with learning disabilities.

5. a. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of this Commonwealth, and contracts with corporations, partnerships, or individuals which include, but are not limited to, the purchase of water or wastewater treatment services or both as necessary for the expansion or construction of correctional facilities, consistent with applicable standards and goals of the Board;

b. Notwithstanding the Director's discretion to make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, upon determining that it shall be desirable to contract with a public or private entity for the provision of community-based residential services pursuant to Chapter 5 (§ 53.1-177 et seq.), the Director shall notify the local governing body of the jurisdiction in which the facility is to be located of the proposal and of the facility's proposed location and provide notice, where requested, to the chief law-enforcement officer for such locality when an offender is placed in the facility at issue;

6. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the United States government and agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Director shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with

60 applicable standards and goals of the Board;

61 7. To collect data pertaining to the demographic characteristics of adults, and juveniles who are
62 adjudicated as adults, incarcerated in state correctional institutions, including, but not limited to, the race
63 or ethnicity, age, and gender of such persons, whether they are a member of a criminal gang, and the
64 types of and extent to which health-related problems are prevalent among such persons. Beginning July
65 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor
66 and the General Assembly at each regular session of the General Assembly thereafter. The report shall
67 be submitted as provided in the procedures of the Division of Legislative Automated Systems for the
68 processing of legislative documents and reports;

69 8. To make application to the appropriate state and federal entities so as to provide any prisoner who
70 is committed to the custody of the state a Department of Motor Vehicles approved identification card
71 that would expire 90 days from issuance, a copy of his birth certificate if such person was born in the
72 Commonwealth, and a social security card from the Social Security Administration;

73 9. To forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list
74 of all identified criminal gang members incarcerated in state correctional institutions. The list shall
75 contain identifying information for each criminal gang member, as well as his criminal record;

76 10. To give notice, to the attorney for the Commonwealth prosecuting a defendant for an offense that
77 occurred in a state correctional facility, of that defendant's known gang membership. The notice shall
78 contain identifying information for each criminal gang member as well as his criminal record; and

79 11. To designate employees of the Department with internal investigations authority to have the same
80 power as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior
81 affecting the operations of the Department. Such employees shall be subject to any minimum training
82 standards established by the Department of Criminal Justice Services under § 9.1-102 for
83 law-enforcement officers prior to exercising any law-enforcement power granted under this subdivision.
84 Nothing in this section shall be construed to grant the Department any authority over the operation and
85 security of local jails not specified in any other provision of law. The Department shall investigate
86 allegations of criminal behavior in accordance with a written agreement entered into with the
87 Department of State Police. The Department shall not investigate any action falling within the authority
88 vested in the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title
89 2.2 unless specifically authorized by the Office of the State Inspector General.

90 12. *To make and enter into contracts with a pharmacy or outsourcing facility to compound the drugs
91 necessary to carry out execution by lethal injection pursuant to § 53.1-234.*

92 **§ 53.1-233. Death chamber; who to execute death sentence.**

93 The Director is hereby authorized and directed to provide and maintain a permanent death chamber
94 and necessary appurtenant facilities within the confines of a state correctional facility. The death
95 chamber shall have all the necessary appliances for the proper execution of prisoners by electrocution or
96 by continuous intravenous injection of a substance or combination of substances sufficient to cause
97 death. Any such substance shall be applied until the prisoner is pronounced dead by a physician licensed
98 in the Commonwealth. All prisoners upon whom the death penalty has been imposed shall be executed
99 in the death chamber. Each execution shall be conducted by the Director or one or more assistants
100 designated by him.

101 The identities of persons designated by the Director to conduct an execution, *the identities of persons
102 or entities engaged to compound drug products for use in the execution, the identities of persons or
103 entities engaged to manufacture or supply the materials used to compound drug products for use in the
104 execution,* and any information reasonably calculated to lead to the identities of such persons, including,
105 but not limited to, their names, residential or office addresses, residential or office telephone numbers,
106 and social security numbers, shall be confidential, shall be exempt from the Freedom of Information Act
107 (§ 2.2-3700 et seq.), and shall not be subject to discovery or introduction as evidence in any civil
108 proceeding unless good cause is shown.

109 *All information relating to (i) the execution process, except information relating to the name or
110 amounts of the materials or components used to compound drug products for use in the execution, and
111 (ii) the interior of buildings devoted to the execution process and all records regarding the equipment
112 used in the execution process shall be exempt from the Freedom of Information Act (§ 2.2-3700 et seq.)
113 and shall not be subject to discovery or introduction as evidence in any civil proceeding unless good
114 cause is shown.*

115 *Nothing in this section shall prohibit the Board of Pharmacy from inspecting or investigating a
116 pharmacy or outsourcing facility compounding drugs pursuant to this section or investigating a person
117 authorized to compound drugs pursuant to this section. Any documents or information related to any
118 such inspection or investigation conducted by the Board of Pharmacy shall be confidential, shall be
119 exempt from the Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be subject to discovery
120 or introduction as evidence in any civil proceeding unless good cause is shown.*

121 **§ 54.1-3301. Exceptions.**

122 This chapter shall not be construed to:

123 1. Interfere with any legally qualified practitioner of dentistry, or veterinary medicine or any
124 physician acting on behalf of the Virginia Department of Health or local health departments, in the
125 compounding of his prescriptions or the purchase and possession of drugs as he may require;

126 2. Prevent any legally qualified practitioner of dentistry, or veterinary medicine or any prescriber, as
127 defined in § 54.1-3401, acting on behalf of the Virginia Department of Health or local health
128 departments, from administering or supplying to his patients the medicines that he deems proper under
129 the conditions of § 54.1-3303 or from causing drugs to be administered or dispensed pursuant to
130 §§ 32.1-42.1 and 54.1-3408, except that a veterinarian shall only be authorized to dispense a
131 compounded drug, distributed from a pharmacy, when (i) the animal is his own patient, (ii) the animal is
132 a companion animal as defined in regulations promulgated by the Board of Veterinary Medicine, (iii) the
133 quantity dispensed is no more than a 72-hour supply, (iv) the compounded drug is for the treatment of
134 an emergency condition, and (v) timely access to a compounding pharmacy is not available, as
135 determined by the prescribing veterinarian;

136 3. Prohibit the sale by merchants and retail dealers of proprietary medicines as defined in Chapter 34
137 (§ 54.1-3400 et seq.) of this title;

138 4. Prevent the operation of automated drug dispensing systems in hospitals pursuant to Chapter 34
139 (§ 54.1-3400 et seq.) of this title;

140 5. Prohibit the employment of ancillary personnel to assist a pharmacist as provided in the
141 regulations of the Board;

142 6. Interfere with any legally qualified practitioner of medicine, osteopathy, or podiatry from
143 purchasing, possessing or administering controlled substances to his own patients or providing controlled
144 substances to his own patients in a bona fide medical emergency or providing manufacturers'
145 professional samples to his own patients;

146 7. Interfere with any legally qualified practitioner of optometry, certified or licensed to use diagnostic
147 pharmaceutical agents, from purchasing, possessing or administering those controlled substances as
148 specified in § 54.1-3221 or interfere with any legally qualified practitioner of optometry certified to
149 prescribe therapeutic pharmaceutical agents from purchasing, possessing, or administering to his own
150 patients those controlled substances as specified in § 54.1-3222 and the TPA formulary, providing
151 manufacturers' samples of these drugs to his own patients, or dispensing, administering, or selling
152 ophthalmic devices as authorized in § 54.1-3204;

153 8. Interfere with any physician assistant with prescriptive authority receiving and dispensing to his
154 own patients manufacturers' professional samples of controlled substances and devices that he is
155 authorized, in compliance with the provisions of § 54.1-2952.1, to prescribe according to his practice
156 setting and a written agreement with a physician or podiatrist;

157 9. Interfere with any licensed nurse practitioner with prescriptive authority receiving and dispensing
158 to his own patients manufacturers' professional samples of controlled substances and devices that he is
159 authorized, in compliance with the provisions of § 54.1-2957.01, to prescribe according to his practice
160 setting and a written or electronic agreement with a physician;

161 10. Interfere with any legally qualified practitioner of medicine or osteopathy participating in an
162 indigent patient program offered by a pharmaceutical manufacturer in which the practitioner sends a
163 prescription for one of his own patients to the manufacturer, and the manufacturer donates a stock bottle
164 of the prescription drug ordered at no cost to the practitioner or patient. The practitioner may dispense
165 such medication at no cost to the patient without holding a license to dispense from the Board of
166 Pharmacy. However, the container in which the drug is dispensed shall be labeled in accordance with
167 the requirements of § 54.1-3410, and, unless directed otherwise by the practitioner or the patient, shall
168 meet standards for special packaging as set forth in § 54.1-3426 and Board of Pharmacy regulations. In
169 lieu of dispensing directly to the patient, a practitioner may transfer the donated drug with a valid
170 prescription to a pharmacy for dispensing to the patient. The practitioner or pharmacy participating in
171 the program shall not use the donated drug for any purpose other than dispensing to the patient for
172 whom it was originally donated, except as authorized by the donating manufacturer for another patient
173 meeting that manufacturer's requirements for the indigent patient program. Neither the practitioner nor
174 the pharmacy shall charge the patient for any medication provided through a manufacturer's indigent
175 patient program pursuant to this subdivision. A participating pharmacy, including a pharmacy
176 participating in bulk donation programs, may charge a reasonable dispensing or administrative fee to
177 offset the cost of dispensing, not to exceed the actual costs of such dispensing. However, if the patient
178 is unable to pay such fee, the dispensing or administrative fee shall be waived;

179 11. Interfere with any legally qualified practitioner of medicine or osteopathy from providing
180 controlled substances to his own patients in a free clinic without charge when such controlled substances
181 are donated by an entity other than a pharmaceutical manufacturer as authorized by subdivision 10. The
182 practitioner shall first obtain a controlled substances registration from the Board and shall comply with

183 the labeling and packaging requirements of this chapter and the Board's regulations; or

184 12. Prevent any pharmacist from providing free health care to an underserved population in Virginia
185 who (i) does not regularly practice pharmacy in Virginia, (ii) holds a current valid license or certificate
186 to practice pharmacy in another state, territory, district or possession of the United States, (iii) volunteers
187 to provide free health care to an underserved area of this Commonwealth under the auspices of a
188 publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to
189 populations of underserved people, (iv) files a copy of the license or certificate issued in such other
190 jurisdiction with the Board, (v) notifies the Board at least five business days prior to the voluntary
191 provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that
192 such licensure exemption shall only be valid, in compliance with the Board's regulations, during the
193 limited period that such free health care is made available through the volunteer, nonprofit organization
194 on the dates and at the location filed with the Board. The Board may deny the right to practice in
195 Virginia to any pharmacist whose license has been previously suspended or revoked, who has been
196 convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations.
197 However, the Board shall allow a pharmacist who meets the above criteria to provide volunteer services
198 without prior notice for a period of up to three days, provided the nonprofit organization verifies that the
199 practitioner has a valid, unrestricted license in another state.

200 13. *Prevent the compounding of drug products for use by the Department of Corrections pursuant to*
201 *Chapter 13 (§ 53.1-232 et seq.) of Title 53.1.*

202 This section shall not be construed as exempting any person from the licensure, registration,
203 permitting and record keeping requirements of this chapter or Chapter 34 of this title (§ 54.1-3400 et
204 seq.).

205 **§ 54.1-3410.2. Compounding; pharmacists' authority to compound under certain conditions;**
206 **labeling and record maintenance requirements.**

207 A. A pharmacist may engage in compounding of drug products when the dispensing of such
208 compounded products is (i) pursuant to valid prescriptions for specific patients and (ii) consistent with
209 the provisions of § 54.1-3303 relating to the issuance of prescriptions and the dispensing of drugs.

210 Pharmacists shall label all compounded drug products that are dispensed pursuant to a prescription in
211 accordance with this chapter and the Board's regulations, and shall include on the labeling an appropriate
212 beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy
213 compounding.

214 B. A pharmacist may also engage in compounding of drug products in anticipation of receipt of
215 prescriptions based on a routine, regularly observed prescribing pattern.

216 Pharmacists shall label all products compounded prior to dispensing with (i) the name and strength of
217 the compounded medication or a list of the active ingredients and strengths; (ii) the pharmacy's assigned
218 control number that corresponds with the compounding record; (iii) an appropriate beyond-use date as
219 determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; and
220 (iv) the quantity.

221 C. In accordance with the conditions set forth in subsections A and B, pharmacists shall not
222 distribute compounded drug products for subsequent distribution or sale to other persons or to
223 commercial entities, including distribution to pharmacies or other entities under common ownership or
224 control with the facility in which such compounding takes place; however, a pharmacist may distribute
225 to a veterinarian in accordance with federal law.

226 Compounded products for companion animals, as defined in regulations promulgated by the Board of
227 Veterinary Medicine, and distributed by a pharmacy to a veterinarian for further distribution or sale to
228 his own patients shall be limited to drugs necessary to treat an emergent condition when timely access
229 to a compounding pharmacy is not available as determined by the prescribing veterinarian.

230 A pharmacist may, however, deliver compounded products dispensed pursuant to valid prescriptions
231 to alternate delivery locations pursuant to § 54.1-3420.2.

232 A pharmacist may also provide compounded products to practitioners of medicine, osteopathy,
233 podiatry, dentistry, or veterinary medicine to administer to their patients in the course of their
234 professional practice, either personally or under their direct and immediate supervision.

235 Pharmacists shall label all compounded products distributed to practitioners other than veterinarians
236 for administration to their patients with (i) the statement "For Administering in Prescriber Practice
237 Location Only"; (ii) the name and strength of the compounded medication or list of the active
238 ingredients and strengths; (iii) the facility's control number; (iv) an appropriate beyond-use date as
239 determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; (v) the
240 name and address of the pharmacy; and (vi) the quantity.

241 Pharmacists shall label all compounded products for companion animals, as defined in regulations
242 promulgated by the Board of Veterinary Medicine, and distributed to a veterinarian for either further
243 distribution or sale to his own patient or administration to his own patient with (a) the name and
244 strength of the compounded medication or list of the active ingredients and strengths; (b) the facility's

245 control number; (c) an appropriate beyond-use date as determined by the pharmacist in compliance with
 246 USP-NF standards for pharmacy compounding; (d) the name and address of the pharmacy; and (e) the
 247 quantity.

248 *A pharmacist may provide compounded products upon written request by the Director of the*
 249 *Department of Corrections certifying that the requested drugs are necessary pursuant to Chapter 13*
 250 *(§ 53.1-232 et seq.) of Title 53.1. Pharmacists shall label all such products with (i) the name and*
 251 *strength of the compounded medication or list of the active ingredients and strengths; (ii) the facility's*
 252 *control number; (iii) an appropriate beyond-use date as determined by the pharmacist in compliance*
 253 *with USP-NF standards for pharmacy compounding; (iv) the name and address of the pharmacy or*
 254 *outsourcing facility; and (v) the quantity.*

255 D. Pharmacists shall personally perform or personally supervise the compounding process, which
 256 shall include a final check for accuracy and conformity to the formula of the product being prepared,
 257 correct ingredients and calculations, accurate and precise measurements, appropriate conditions and
 258 procedures, and appearance of the final product.

259 E. Pharmacists shall ensure compliance with USP-NF standards for both sterile and non-sterile
 260 compounding.

261 F. Pharmacists may use bulk drug substances in compounding when such bulk drug substances:

262 1. Comply with the standards of an applicable United States Pharmacopoeia or National Formulary
 263 monograph, if such monograph exists, and the United States Pharmacopoeia chapter on pharmacy
 264 compounding; or are drug substances that are components of drugs approved by the FDA for use in the
 265 United States; or are otherwise approved by the FDA;

266 2. Are manufactured by an establishment that is registered by the FDA; or

267 3. Are distributed by a licensed wholesale distributor or registered nonresident wholesale distributor,
 268 or are distributed by a supplier otherwise approved by the FDA to distribute bulk drug substances if the
 269 pharmacist can establish purity and safety by reasonable means, such as lot analysis, manufacturer
 270 reputation, or reliability of the source.

271 G. Pharmacists may compound using ingredients that are not considered drug products in accordance
 272 with the USP-NF standards and guidance on pharmacy compounding.

273 H. Pharmacists shall not engage in the following:

274 1. The compounding for human use of a drug product that has been withdrawn or removed from the
 275 market by the FDA because such drug product or a component of such drug product has been found to
 276 be unsafe. However, this prohibition shall be limited to the scope of the FDA withdrawal;

277 2. The regular compounding or the compounding of inordinate amounts of any drug products that are
 278 essentially copies of commercially available drug products. However, this prohibition shall not include
 279 (i) the compounding of any commercially available product when there is a change in the product
 280 ordered by the prescriber for an individual patient, (ii) the compounding of a commercially
 281 manufactured drug only during times when the product is not available from the manufacturer or
 282 supplier, (iii) the compounding of a commercially manufactured drug whose manufacturer has notified
 283 the FDA that the drug is unavailable due to a current drug shortage, (iv) the compounding of a
 284 commercially manufactured drug when the prescriber has indicated in the oral or written prescription for
 285 an individual patient that there is an emergent need for a drug that is not readily available within the
 286 time medically necessary, or (v) the mixing of two or more commercially available products regardless
 287 of whether the end product is a commercially available product; or

288 3. The compounding of inordinate amounts of any preparation in cases in which there is no observed
 289 historical pattern of prescriptions and dispensing to support an expectation of receiving a valid
 290 prescription for the preparation. The compounding of an inordinate amount of a preparation in such
 291 cases shall constitute manufacturing of drugs.

292 I. Pharmacists shall maintain records of all compounded drug products as part of the prescription,
 293 formula record, formula book, or other log or record. Records may be maintained electronically,
 294 manually, in a combination of both, or by any other readily retrievable method.

295 1. In addition to other requirements for prescription records, records for products compounded
 296 pursuant to a prescription order for a single patient where only manufacturers' finished products are used
 297 as components shall include the name and quantity of all components, the date of compounding and
 298 dispensing, the prescription number or other identifier of the prescription order, the total quantity of
 299 finished product, the signature or initials of the pharmacist or pharmacy technician performing the
 300 compounding, and the signature or initials of the pharmacist responsible for supervising the pharmacy
 301 technician and verifying the accuracy and integrity of compounded products.

302 2. In addition to the requirements of subdivision I 1, records for products compounded in bulk or
 303 batch in advance of dispensing or when bulk drug substances are used shall include: the generic name
 304 and the name of the manufacturer of each component or the brand name of each component; the
 305 manufacturer's lot number and expiration date for each component or when the original manufacturer's

306 lot number and expiration date are unknown, the source of acquisition of the component; the assigned
307 lot number if subdivided, the unit or package size and the number of units or packages prepared; and
308 the beyond-use date. The criteria for establishing the beyond-use date shall be available for inspection
309 by the Board.

310 3. A complete compounding formula listing all procedures, necessary equipment, necessary
311 environmental considerations, and other factors in detail shall be maintained where such instructions are
312 necessary to replicate a compounded product or where the compounding is difficult or complex and
313 must be done by a certain process in order to ensure the integrity of the finished product.

314 4. A formal written quality assurance plan shall be maintained that describes specific monitoring and
315 evaluation of compounding activities in accordance with USP-NF standards. Records shall be maintained
316 showing compliance with monitoring and evaluation requirements of the plan to include training and
317 initial and periodic competence assessment of personnel involved in compounding, monitoring of
318 environmental controls and equipment calibration, and any end-product testing, if applicable.

319 J. Practitioners who may lawfully compound drugs for administering or dispensing to their own
320 patients pursuant to §§ 54.1-3301, 54.1-3304, and 54.1-3304.1 shall comply with all provisions of this
321 section and the relevant Board regulations.

322 K. Every pharmacist-in-charge or owner of a permitted pharmacy or a registered nonresident
323 pharmacy engaging in sterile compounding shall notify the Board of its intention to dispense or
324 otherwise deliver a sterile compounded drug product into the Commonwealth. Upon renewal of its
325 permit or registration, a pharmacy or nonresident pharmacy shall notify the Board of its intention to
326 continue dispensing or otherwise delivering sterile compounded drug products into the Commonwealth.
327 Failure to provide notification to the Board shall constitute a violation of Chapter 33 (§ 54.1-3300 et
328 seq.) or Chapter 34 (§ 54.1-3400 et seq.). The Board shall maintain this information in a manner that
329 will allow the production of a list identifying all such sterile compounding pharmacies.