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SENATE BILL NO. 1484

Offered January 17, 2017

A BILL to amend and reenact §§ 54.1-2523 and 54.1-2523.2, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to the Prescription Monitoring Program; disclosures and authority to access.

Patron—Hanger

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2523 and 54.1-2523.2, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 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. Records in possession of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. 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.

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

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

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

5. Information relevant to a specific investigation, supervision, or monitoring of a specific recipient for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.) of Title 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed the Virginia State Police Drug Diversion School designated by the Director of the Department of Corrections or his designee.

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

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

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

3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription

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59 history to assist the dispenser in (i) determining the validity of a prescription in accordance with
60 § 54.1-3303 or (ii) providing clinical consultation on the care and treatment of the recipient. In a manner
61 specified by the Director in regulation, notice shall be given to patients that information may be
62 requested by the dispenser from the Prescription Monitoring Program.

63 4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or
64 prescriber to other regulatory authorities concerned with granting, limiting or denying licenses,
65 certificates or registrations to practice a health profession when such regulatory authority licenses such
66 dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory
67 authority.

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

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

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

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

83 9. Information about a specific recipient who is a member of a Virginia Medicaid managed care
84 program to a physician or pharmacist licensed in the Commonwealth *or another jurisdiction* and
85 employed by the Virginia Medicaid managed care program. Such information shall only be used to
86 determine eligibility for and to manage the care of the specific recipient in a Patient Utilization
87 Management Safety or similar program. Notice shall be given to recipients that information may be
88 requested by a licensed physician or pharmacist employed by the Virginia Medicaid managed care
89 program from the Prescription Monitoring Program. *The information shall be provided via electronic*
90 *access to the Prescription Monitoring Program in real time. Such electronic access shall be identical to*
91 *that provided to a prescriber or a dispenser who receives information pursuant to subdivision 2 or 3,*
92 *respectively. For the purposes of this subdivision, "real time" means a virtually instantaneous response*
93 *to an electronic inquiry.*

94 10. (Expires July 1, 2022) Information to the Board of Medicine about prescribers who meet a
95 certain threshold for prescribing covered substances for the purpose of requiring relevant continuing
96 education. The threshold shall be determined by the Board of Medicine in consultation with the
97 Program.

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

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

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

109 **§ 54.1-2523.2. (Effective until July 1, 2019) Authority to access database.**

110 Any prescriber or dispenser, or physician or pharmacist described in subdivision C 9 of § 54.1-2523
111 authorized to access the information in the possession of the Prescription Monitoring Program pursuant
112 to this chapter may, pursuant to regulations promulgated by the Director to implement the provisions of
113 this section, delegate such authority to individuals who are employed or engaged at the same facility and
114 under the direct supervision of the prescriber or dispenser, or physician or pharmacist described in
115 subdivision C 9 of § 54.1-2523 and (i) are licensed, registered, or certified by a health regulatory board
116 under the Department of Health Professions or in another jurisdiction or (ii) have routine access to
117 confidential patient data and have signed a patient data confidentiality agreement.

118 **§ 54.1-2523.2. (Effective July 1, 2019) Authority to access database.**

119 Any prescriber or dispenser, or physician or pharmacist described in subdivision C 9 of § 54.1-2523
120 authorized to access the information in the possession of the Prescription Monitoring Program pursuant

121 to this chapter may, pursuant to regulations promulgated by the Director to implement the provisions of
122 this section, delegate such authority to health care professionals who are (i) licensed, registered, or
123 certified by a health regulatory board under the Department of Health Professions or in another
124 jurisdiction and (ii) employed at the same facility and under the direct supervision of the prescriber or
125 dispenser.
126 **2. That the Director of the Virginia Department of Health Professions shall promulgate regulations**
127 **to implement the provisions of this act to be effective within 280 days of its enactment.**

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