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**HOUSE BILL NO. 503**

Offered January 10, 2018

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*A BILL to amend and reenact § 54.1-2523 of the Code of Virginia, relating to the Prescription Monitoring Program; disclosure of information; fitness to work and return to work evaluations.*

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Patron—Mullin

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Referred to Committee on Health, Welfare and Institutions

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**Be it enacted by the General Assembly of Virginia:****1. That § 54.1-2523 of the Code of Virginia is 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 2 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~~ (i) ~~the~~ recipient is ~~either~~ under the care of and receiving treatment by from the prescriber or, (ii) the prescriber is consulting on or initiating treatment of ~~such~~ the recipient, or (iii) ~~the~~ prescriber is consulting on the treatment of the 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 and employed by the Virginia  
85 Medicaid managed care program or to his clinical designee who holds a multistate licensure privilege to  
86 practice nursing or a license issued by a health regulatory board within the Department of Health  
87 Professions and is employed by the Virginia Medicaid managed care program. Such information shall  
88 only be used to determine eligibility for and to manage the care of the specific recipient in a Patient  
89 Utilization Management Safety or similar program. Notice shall be given to recipients that information  
90 may be requested by a licensed physician or pharmacist employed by the Virginia Medicaid managed  
91 care program from the Prescription Monitoring Program.

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

96 11. *Information about a specific recipient to a physician licensed in the Commonwealth or another*  
97 *state who is performing an evaluation of the recipient's fitness for work or to return to work in a*  
98 *safety-sensitive position, as defined by the recipient's employer, at the request of the recipient's employer*  
99 *and for the purpose of establishing the recipient's treatment history. Notice that information from the*  
100 *Prescription Monitoring Program may be requested and received by the physician performing the fitness*  
101 *for work or return to work evaluation shall be given to each individual for whom a fitness for work or*  
102 *return to work evaluation is performed in a manner specified by the Director in regulation.*

103 12. *Information about a specific recipient to a physician licensed in the Commonwealth or another*  
104 *state who is performing an evaluation of the recipient's fitness for work at a place of employment with a*  
105 *written drug-free workplace policy following an offer of employment but prior to hiring the recipient,*  
106 *upon request of the employer and when the request is consistent with the employer's written drug-free*  
107 *workplace policy, for the purpose of establishing the recipient's treatment history. Notice that*  
108 *information from the Prescription Monitoring Program may be requested and received by the physician*  
109 *performing the evaluation of the recipient's fitness for work at a place of employment with a written*  
110 *drug-free workplace policy shall be given to each individual for whom a fitness for work evaluation is*  
111 *performed in a manner specified by the Director in regulation.*

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

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

117 F. Confidential information that has been received, maintained or developed by any board or  
118 disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for  
119 discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action  
120 for damages arising out of the provision of or failure to provide services. However, this subsection shall

**121** not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247  
**122** et seq.) of Chapter 7 of Title 18.2.

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