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HOUSE BILL NO. 2368

House Amendments in [] - February 6, 2023

A *BILL to amend and reenact §§ 54.1-2521, 54.1-3408.3, and 54.1-3442.6 of the Code of Virginia, relating to medical marijuana program; product requirements; certifications; reporting.*

Patron Prior to Engrossment—Delegate Adams, D.M.

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2521, 54.1-3408.3, and 54.1-3442.6 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2521. Reporting requirements.

A. The failure by any person subject to the reporting requirements set forth in this section and the Department's regulations to report the dispensing of covered substances shall constitute grounds for disciplinary action by the relevant health regulatory board.

B. Upon dispensing a covered substance, a dispenser of such covered substance shall report the following information:

1. The recipient's name and address.

2. The recipient's date of birth.

3. The covered substance that was dispensed to the recipient, *which, in the case of a cannabis product, shall be listed as the primary cannabinoid of such cannabis product.*

4. The quantity of the covered substance that was dispensed.

5. The date of the dispensing.

6. The prescriber's identifier number and, in cases in which the covered substance is a cannabis product, the *product's national drug code and the expiration date of the written certification.*

7. The dispenser's identifier number.

8. The method of payment for the prescription.

9. Any other non-clinical information that is designated by the Director as necessary for the implementation of this chapter in accordance with the Department's regulations.

10. Any other information specified in regulations promulgated by the Director as required in order for the Prescription Monitoring Program to be eligible to receive federal funds.

C. Except as provided in subdivision 7 of § 54.1-2522, in cases where the ultimate user of a covered substance is an animal, the dispenser shall report the relevant information required by subsection B for the owner of the animal.

D. The reports required herein shall be made to the Department or its agent within 24 hours or the dispenser's next business day, whichever comes later, and shall be made and transmitted in such manner and format and according to the standards and schedule established in the Department's regulations.

E. In the case of a cannabis product, the Prescription Monitoring Program shall only include the information set forth in subsection B.

§ 54.1-3408.3. Certification for use of cannabis oil for treatment.

A. As used in this section:

"Botanical cannabis" means cannabis that is composed wholly of usable cannabis from the same parts of the same chemovar of cannabis plant.

"Cannabis oil" means any formulation of processed Cannabis plant extract, which may include industrial hemp extracts, including isolates and distillates, acquired by a pharmaceutical processor pursuant to § 54.1-3442.6, or a dilution of the resin of the Cannabis plant that contains no more than 10 milligrams of delta-9-tetrahydrocannabinol per dose. "Cannabis oil" does not include industrial hemp, as defined in § 3.2-4112, that is grown, dealt, or processed in compliance with state or federal law, unless it has been grown and processed in the Commonwealth by a registered industrial hemp processor and acquired and formulated by a pharmaceutical processor.

"Cannabis product" means a product that is (i) produced by a pharmaceutical processor, registered with the Board, and compliant with testing requirements and (ii) composed of cannabis oil or botanical cannabis.

"Designated caregiver facility" means any hospice or hospice facility licensed pursuant to § 32.1-162.3, or home care organization as defined in § 32.1-162.7 that provides pharmaceutical services or home health services, private provider licensed by the Department of Behavioral Health and Developmental Services pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2, assisted living facility licensed pursuant to § 63.2-1701, or adult day care center licensed pursuant to

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59 § 63.2-1701.

60 "Practitioner" means a practitioner of medicine or osteopathy licensed by the Board of Medicine, a
61 physician assistant licensed by the Board of Medicine, or a nurse practitioner jointly licensed by the
62 Board of Medicine and the Board of Nursing.

63 "Registered agent" means an individual (i) designated by a patient who has been issued a written
64 certification, or, if such patient is a minor or a vulnerable adult as defined in § 18.2-369, designated by
65 such patient's parent or legal guardian, and (ii) registered with the Board *or listed on the patient's*
66 *written certification* pursuant to subsection G.

67 "Usable cannabis" means any cannabis plant material, including seeds, but not (i) resin that has been
68 extracted from any part of the cannabis plant, its seeds, or its resin; (ii) the mature stalks, fiber produced
69 from the stalks, or any other compound, manufacture, salt, or derivative, mixture, or preparation of the
70 mature stalks; or (iii) oil or cake made from the seeds of the plant.

71 B. A practitioner in the course of his professional practice may issue a written certification for the
72 use of cannabis products for treatment or to alleviate the symptoms of any diagnosed condition or
73 disease determined by the practitioner to benefit from such use. The practitioner shall use his
74 professional judgment to determine the manner and frequency of patient care and evaluation and may
75 employ the use of telemedicine, provided that the use of telemedicine includes the delivery of patient
76 care through real-time interactive audio-visual technology. If a practitioner determines it is consistent
77 with the standard of care to dispense botanical cannabis to a minor, the written certification shall
78 specifically authorize such dispensing. If not specifically included on the initial written certification,
79 authorization for botanical cannabis may be communicated verbally or in writing to the pharmacist at
80 the time of dispensing.

81 C. The written certification shall be on a form provided by the Board of Pharmacy. Such written
82 certification shall contain the name, address, and telephone number of the practitioner; the name and
83 address of the patient issued the written certification; the date on which the written certification was
84 made; and the signature or authentic electronic signature of the practitioner. Such written certification
85 issued pursuant to subsection B shall expire no later than one year after its issuance unless the
86 practitioner provides in such written certification an earlier expiration. A written certification shall not be
87 issued to a patient by more than one practitioner during any given time period.

88 D. No practitioner shall be prosecuted under § 18.2-248 or 18.2-248.1 for the issuance of a
89 certification for the use of cannabis products for the treatment or to alleviate the symptoms of a patient's
90 diagnosed condition or disease pursuant to a written certification issued pursuant to subsection B.
91 Nothing in this section shall preclude the Board of Medicine from sanctioning a practitioner for failing
92 to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard
93 of care for evaluating or treating medical conditions.

94 E. A practitioner who issues a written certification to a patient pursuant to this section shall register
95 with the Board and shall hold sufficient education and training to exercise appropriate professional
96 judgment in the certification of patients. The Board shall not limit the number of patients to whom a
97 practitioner may issue a written certification. The Board may report information to the applicable
98 licensing board on unusual patterns of certifications issued by a practitioner.

99 F. No patient shall be required to physically present the written certification after the initial
100 dispensing by any pharmaceutical processor or cannabis dispensing facility under each written
101 certification, provided that the pharmaceutical processor or cannabis dispensing facility maintains an
102 electronic copy of the written certification. Pharmaceutical processors and cannabis dispensing facilities
103 shall electronically transmit, on a monthly basis, all new written certifications received by the
104 pharmaceutical processor or cannabis dispensing facility to the Board.

105 G. A patient, or, if such patient is a minor or a vulnerable adult as defined in § 18.2-369, such
106 patient's parent or legal guardian, may designate an individual to act as his registered agent for the
107 purposes of receiving cannabis products pursuant to a valid written certification. Such designated
108 individual shall register with the Board *unless the individual's name is listed on the patient's written*
109 *certification. An individual may, on the basis of medical need and in the discretion of the patient's*
110 *registered practitioner, be listed on the patient's written certification upon the patient's request.* The
111 Board may set a limit on the number of patients for whom any individual is authorized to act as a
112 registered agent.

113 H. Upon delivery of a cannabis product by a pharmaceutical processor or cannabis dispensing facility
114 to a designated caregiver facility, any employee or contractor of a designated caregiver facility, who is
115 licensed or registered by a health regulatory board and who is authorized to possess, distribute, or
116 administer medications, may accept delivery of the cannabis product on behalf of a patient or resident
117 for subsequent delivery to the patient or resident and may assist in the administration of the cannabis
118 product to the patient or resident as necessary.

119 I. Information obtained under the registration process shall be confidential and shall not be subject to
120 the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However,

reasonable access to registry information shall be provided to (i) the Chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary, (ii) state and federal agencies or local law enforcement for the purpose of investigating or prosecuting a specific individual for a specific violation of law, (iii) licensed practitioners or pharmacists, or their agents, for the purpose of providing patient care and drug therapy management and monitoring of drugs obtained by a patient, (iv) a pharmaceutical processor or cannabis dispensing facility involved in the treatment of a patient, or (v) a registered agent, but only with respect to information related to such patient.

§ 54.1-3442.6. Permit to operate pharmaceutical processor or cannabis dispensing facility.

A. No person shall operate a pharmaceutical processor or a cannabis dispensing facility without first obtaining a permit from the Board. The application for such permit shall be made on a form provided by the Board and signed by a pharmacist who will be in full and actual charge of the pharmaceutical processor's dispensing area or cannabis dispensing facility. The Board shall establish an application fee and other general requirements for such application.

B. Each permit shall expire annually on a date determined by the Board in regulation. The number of permits that the Board may issue or renew in any year is limited to one pharmaceutical processor and up to five cannabis dispensing facilities for each health service area established by the Board of Health. Permits shall be displayed in a conspicuous place on the premises of the pharmaceutical processor and cannabis dispensing facility.

C. The Board shall adopt regulations establishing health, safety, and security requirements for pharmaceutical processors and cannabis dispensing facilities. Such regulations shall include requirements for (i) physical standards; (ii) location restrictions; (iii) security systems and controls; (iv) minimum equipment and resources; (v) recordkeeping; (vi) labeling, including the potency of each botanical cannabis product and the amounts recommended by the practitioner or dispensing pharmacist, and packaging; (vii) routine inspections no more frequently than once annually; (viii) processes for safely and securely dispensing and delivering in person cannabis products to a patient, his registered agent, or, if such patient is a minor or a vulnerable adult as defined in § 18.2-369, such patient's parent or legal guardian; (ix) dosage limitations for cannabis oil that provide that each dispensed dose of cannabis oil not exceed 10 milligrams of delta-9-tetrahydrocannabinol; (x) a process for the wholesale distribution of and the transfer of usable cannabis, botanical cannabis, cannabis oil, and cannabis products between pharmaceutical processors, between a pharmaceutical processors and a cannabis dispensing facility, and between cannabis dispensing facilities; (xi) an allowance for the sale of devices for administration of dispensed cannabis products and hemp-based CBD products that meet the applicable standards set forth in state and federal law, including the laboratory testing standards set forth in subsection M; (xii) an allowance for the use and distribution of inert product samples containing no cannabinoids for patient demonstration exclusively at the pharmaceutical processor or cannabis dispensing facility, and not for further distribution or sale, without the need for a written certification; (xiii) a process for acquiring industrial hemp extracts and formulating such extracts into cannabis products; and (xiv) an allowance for the advertising and promotion of the pharmaceutical processor's products and operations, which shall not limit the pharmaceutical processor from the provision of educational material to practitioners who issue written certifications and patients. The Board shall also adopt regulations for pharmaceutical processors that include requirements for (a) processes for safely and securely cultivating Cannabis plants intended for producing cannabis products, (b) the secure disposal of agricultural waste, and (c) a process for registering cannabis oil products.

D. The Board shall require that, after processing and before dispensing any cannabis products, a pharmaceutical processor shall make a sample available from each batch of cannabis product for testing by an independent laboratory located in Virginia meeting Board requirements. A valid sample size for testing shall be determined by each laboratory and may vary due to sample matrix, analytical method, and laboratory-specific procedures. A minimum sample size of 0.5 percent of individual units for dispensing or distribution from each homogenized batch of cannabis oil is required to achieve a representative cannabis oil sample for analysis. A minimum sample size, to be determined by the certified testing laboratory, from each batch of botanical cannabis is required to achieve a representative botanical cannabis sample for analysis. Botanical cannabis products shall only be tested for the following: total cannabidiol (CBD); total tetrahydrocannabinol (THC); terpenes; pesticide chemical residue; heavy metals; mycotoxins; moisture; and microbiological contaminants. Testing thresholds shall be consistent with generally accepted cannabis industry thresholds. The pharmaceutical processor may remediate botanical cannabis or cannabis oil that fails any quality testing standard except pesticides. Following remediation, all remediated botanical cannabis or cannabis oil shall be subject to laboratory testing and approved upon satisfaction of applicable testing standards, which shall not be more stringent than initial testing prior to remediation. If a batch of botanical cannabis fails retesting after remediation, it shall be considered usable cannabis and may be processed into cannabis oil. Stability testing shall not be required for any cannabis product with an expiration date assigned by the pharmaceutical processor

182 of six months or less from the date of the cannabis product registration approval. Stability testing
183 required for assignment of an expiration date longer than six months shall be limited to microbial
184 testing, on a pass/fail basis, and potency testing, on a 10 percent deviation basis, of active ingredients.

185 E. A laboratory testing samples for a pharmaceutical processor shall obtain a controlled substances
186 registration certificate pursuant to § 54.1-3423 and shall comply with quality standards established by the
187 Board in regulation.

188 F. Every pharmaceutical processor's dispensing area or cannabis dispensing facility shall be under the
189 personal supervision of a licensed pharmacist on the premises of the pharmaceutical processor or
190 cannabis dispensing facility. The pharmaceutical processor shall ensure that security measures are
191 adequate to protect the cannabis from diversion at all times, and the pharmacist-in-charge shall have
192 concurrent responsibility for preventing diversion from the dispensing area.

193 Every pharmaceutical processor shall designate a person who shall have oversight of the cultivation
194 and production areas of the pharmaceutical processor and shall provide such information to the Board.
195 The Board shall direct all communications related to enforcement of requirements related to cultivation
196 and production of cannabis oil products by the pharmaceutical processor to such designated person.

197 G. The Board shall require the material owners of an applicant for a pharmaceutical processor or
198 cannabis dispensing facility permit to submit to fingerprinting and provide personal descriptive
199 information to be forwarded along with his fingerprints through the Central Criminal Records Exchange
200 to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information
201 regarding the applicant's material owners. The cost of fingerprinting and the criminal history record
202 search shall be paid by the applicant. The Central Criminal Records Exchange shall forward the results
203 of the criminal history background check to the Board or its designee, which shall be a governmental
204 entity. A pharmaceutical processor shall maintain evidence of criminal background checks for all
205 employees and delivery agents of the pharmaceutical processor. Criminal background checks of
206 employees and delivery agents may be conducted by any service sufficient to disclose any federal and
207 state criminal convictions.

208 H. In addition to other employees authorized by the Board, a pharmaceutical processor may employ
209 individuals who may have less than two years of experience (i) to perform cultivation-related duties
210 under the supervision of an individual who has received a degree in a field related to the cultivation of
211 plants or a certification recognized by the Board or who has at least two years of experience cultivating
212 plants, (ii) to perform extraction-related duties under the supervision of an individual who has a degree
213 in chemistry or pharmacology or at least two years of experience extracting chemicals from plants, and
214 (iii) to perform duties at the pharmaceutical processor and cannabis dispensing facility upon certification
215 as a pharmacy technician.

216 I. A pharmaceutical processor to whom a permit has been issued by the Board may establish up to
217 five cannabis dispensing facilities for the dispensing of cannabis products that have been cultivated and
218 produced on the premises of a pharmaceutical processor permitted by the Board. Each cannabis
219 dispensing facility shall be located within the same health service area as the pharmaceutical processor.

220 J. No person who has been convicted of a felony under the laws of the Commonwealth or another
221 jurisdiction within the last five years shall be employed by or act as an agent of a pharmaceutical
222 processor or cannabis dispensing facility.

223 K. Every pharmaceutical processor or cannabis dispensing facility shall adopt policies for
224 pre-employment drug screening and regular, ongoing, random drug screening of employees.

225 L. A pharmacist at the pharmaceutical processor's dispensing area and the cannabis dispensing facility
226 shall determine the number of pharmacy interns, pharmacy technicians, and pharmacy technician trainees
227 who can be safely and competently supervised at one time; however, no pharmacist shall supervise more
228 than six persons performing the duties of a pharmacy technician at one time in the pharmaceutical
229 processor's dispensing area or cannabis dispensing facility.

230 M. A pharmaceutical processor may acquire industrial hemp extracts grown and processed in
231 Virginia, and in compliance with state or federal law, from a registered industrial hemp dealer or
232 processor. A pharmaceutical processor may process and formulate such extracts into an allowable dosage
233 of cannabis product. Industrial hemp extracts acquired and formulated by a pharmaceutical processor are
234 subject to the same third-party testing requirements that may apply to cannabis plant extract. Testing
235 shall be performed by a laboratory located in Virginia and in compliance with state law governing the
236 testing of cannabis products. The industrial hemp dealer or processor shall provide such third-party
237 testing results to the pharmaceutical processor before industrial hemp extracts may be acquired.

238 N. *Product labels for all cannabis products and botanical cannabis shall be complete, accurate,*
239 *easily discernable, and uniform among different products and brands. Pharmaceutical processors shall*
240 *affix to all cannabis products and botanical cannabis a label, which shall also be accessible on the*
241 *pharmaceutical processor's website, that includes:*

242 1. *The product name;*

243 2. *All active and inactive ingredients, including cannabinoids, terpenes, additives, preservatives,*

244 flavorings, sweeteners, and carrier oils;

245 3. The total percentage and milligrams of tetrahydrocannabinol and cannabidiol included in the
246 product and the number of milligrams of tetrahydrocannabinol and cannabidiol in each serving;

247 4. The amount of product that constitutes a single serving and the amount recommended for use by
248 the practitioner or dispensing pharmacist;

249 5. Information regarding the product's purpose and detailed usage directions; and

250 6. Child and safety warnings in a conspicuous font.

251 O. ~~[No less than 50 percent of all cannabis products offered for sale by a A]~~ pharmaceutical
252 processor or cannabis dispensing facility shall ~~[maintain an adequate supply of cannabis products that~~
253 ~~] (i) contain cannabidiol as [~~its~~ their] primary cannabinoid and (ii) have low levels of or no~~
254 tetrahydrocannabinol.

255 P. With the exception of § 2.2-4031, neither the provisions of the Administrative Process Act
256 (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the
257 adoption of any regulation pursuant to this section. Prior to adopting any regulation pursuant to this
258 section, the Board of Pharmacy shall publish a notice of opportunity to comment in the Virginia
259 Register of Regulations and post the action on the Virginia Regulatory Town Hall. Such notice of
260 opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) the text of the
261 proposed regulation; and (iii) the name, address, and telephone number of the agency contact person
262 responsible for receiving public comments. Such notice shall be made at least 60 days in advance of the
263 last date prescribed in such notice for submittals of public comment. The legislative review provisions of
264 subsections A and B of § 2.2-4014 shall apply to the promulgation or final adoption process for
265 regulations pursuant to this section. The Board of Pharmacy shall consider and keep on file all public
266 comments received for any regulation adopted pursuant to this section.

267 ~~Q.~~ Q. The Board shall register all cannabis products that meet testing, labeling, and packaging
268 standards.

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