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SENATE BILL NO. 1084

Offered January 11, 2023

Prefiled January 9, 2023

A BILL to amend and reenact § 54.1-3303 of the Code of Virginia, relating to prescription of Schedule VI controlled substances; asynchronous interactions.

Patron—Bell

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-3303 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.

A. A prescription for a controlled substance may be issued only by a practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled substances, a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed certified midwife pursuant to § 54.1-2957.04, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32.

B. A prescription shall be issued only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship or veterinarian-client-patient relationship. If a practitioner is providing expedited partner therapy consistent with the recommendations of the Centers for Disease Control and Prevention, then a bona fide practitioner-patient relationship shall not be required.

A bona fide practitioner-patient relationship shall exist if the practitioner has (i) obtained or caused to be obtained a medical or drug history of the patient; (ii) provided information to the patient about the benefits and risks of the drug being prescribed; (iii) performed or caused to be performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; and (iv) initiated additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects. Except in cases involving a medical emergency, the examination required pursuant to clause (iii) shall be performed by the practitioner prescribing the controlled substance, a practitioner who practices in the same group as the practitioner prescribing the controlled substance, or a consulting practitioner.

A practitioner who has established a bona fide practitioner-patient relationship with a patient in accordance with the provisions of this subsection may prescribe Schedule II through VI controlled substances to that patient.

A practitioner who has established a bona fide practitioner-patient relationship with a patient in accordance with the provisions of this subsection may prescribe Schedule II through VI controlled substances to that patient via telemedicine if such prescribing is in compliance with federal requirements for the practice of telemedicine and, in the case of the prescribing of a Schedule II through V controlled substance, the prescriber maintains a practice at a physical location in the Commonwealth or is able to make appropriate referral of patients to a licensed practitioner located in the Commonwealth in order to ensure an in-person examination of the patient when required by the standard of care.

A prescriber may establish a bona fide practitioner-patient relationship for the purpose of prescribing Schedule II through VI controlled substances by an examination through face-to-face interactive, two-way, real-time communications services or store-and-forward technologies when all of the following conditions are met: (a) the patient has provided a medical history that is available for review by the prescriber; (b) the prescriber obtains an updated medical history at the time of prescribing; (c) the prescriber makes a diagnosis at the time of prescribing; (d) the prescriber conforms to the standard of care expected of in-person care as appropriate to the patient's age and presenting condition, including when the standard of care requires the use of diagnostic testing and performance of a physical examination, which may be carried out through the use of peripheral devices appropriate to the patient's condition; (e) the prescriber is actively licensed in the Commonwealth and authorized to prescribe; (f) if the patient is a member or enrollee of a health plan or carrier, the prescriber has been credentialed by the health plan or carrier as a participating provider and the diagnosing and prescribing meets the qualifications for reimbursement by the health plan or carrier pursuant to § 38.2-3418.16; (g) upon request, the prescriber provides patient records in a timely manner in accordance with the provisions of § 32.1-127.1:03 and all other state and federal laws and regulations; (h) the establishment of a bona fide practitioner-patient relationship via telemedicine is consistent with the standard of care, and the standard

of care does not require an in-person examination for the purpose of diagnosis; and (i) the establishment of a bona fide practitioner patient relationship via telemedicine is consistent with federal law and regulations and any waiver thereof. Nothing in this paragraph shall apply to (1) a prescriber providing on-call coverage per an agreement with another prescriber or his prescriber's professional entity or employer; (2) a prescriber consulting with another prescriber regarding a patient's care; or (3) orders of prescribers for hospital out-patients or in-patients.

A practitioner may establish a bona fide practitioner-patient relationship through asynchronous interaction for the purpose of prescribing Schedule VI controlled substances if the patient chooses not to use insurance for the encounter and if such prescribing complies with federal requirements for the practice of telemedicine.

For purposes of this section, a bona fide veterinarian-client-patient relationship is one in which a veterinarian, another veterinarian within the group in which he practices, or a veterinarian with whom he is consulting has assumed the responsibility for making medical judgments regarding the health of and providing medical treatment to an animal as defined in § 3.2-6500, other than an equine as defined in § 3.2-6200, a group of agricultural animals as defined in § 3.2-6500, or bees as defined in § 3.2-4400, and a client who is the owner or other caretaker of the animal, group of agricultural animals, or bees has consented to such treatment and agreed to follow the instructions of the veterinarian. Evidence that a veterinarian has assumed responsibility for making medical judgments regarding the health of and providing medical treatment to an animal, group of agricultural animals, or bees shall include evidence that the veterinarian (A) has sufficient knowledge of the animal, group of agricultural animals, or bees to provide a general or preliminary diagnosis of the medical condition of the animal, group of agricultural animals, or bees; (B) has made an examination of the animal, group of agricultural animals, or bees, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically or has become familiar with the care and keeping of that species of animal or bee on the premises of the client, including other premises within the same operation or production system of the client, through medically appropriate and timely visits to the premises at which the animal, group of agricultural animals, or bees are kept; and (C) is available to provide follow-up care.

C. A prescription shall only be issued for a medicinal or therapeutic purpose in the usual course of treatment or for authorized research. A prescription not issued in the usual course of treatment or for authorized research is not a valid prescription. A practitioner who prescribes any controlled substance with the knowledge that the controlled substance will be used otherwise than for medicinal or therapeutic purposes shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the distribution or possession of controlled substances.

D. No prescription shall be filled unless a bona fide practitioner-patient-pharmacist relationship exists. A bona fide practitioner-patient-pharmacist relationship shall exist in cases in which a practitioner prescribes, and a pharmacist dispenses, controlled substances in good faith to a patient for a medicinal or therapeutic purpose within the course of his professional practice.

In cases in which it is not clear to a pharmacist that a bona fide practitioner-patient relationship exists between a prescriber and a patient, a pharmacist shall contact the prescribing practitioner or his agent and verify the identity of the patient and name and quantity of the drug prescribed.

Any person knowingly filling an invalid prescription shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the sale, distribution or possession of controlled substances.

E. Notwithstanding any provision of law to the contrary and consistent with recommendations of the Centers for Disease Control and Prevention or the Department of Health, a practitioner may prescribe Schedule VI antibiotics and antiviral agents to other persons in close contact with a diagnosed patient when (i) the practitioner meets all requirements of a bona fide practitioner-patient relationship, as defined in subsection B, with the diagnosed patient and (ii) in the practitioner's professional judgment, the practitioner deems there is urgency to begin treatment to prevent the transmission of a communicable disease. In cases in which the practitioner is an employee of or contracted by the Department of Health or a local health department, the bona fide practitioner-patient relationship with the diagnosed patient, as required by clause (i), shall not be required.

F. A pharmacist may dispense a controlled substance pursuant to a prescription of an out-of-state practitioner of medicine, osteopathy, podiatry, dentistry, optometry, or veterinary medicine, a nurse practitioner, or a physician assistant authorized to issue such prescription if the prescription complies with the requirements of this chapter and the Drug Control Act (§ 54.1-3400 et seq.).

G. A licensed nurse practitioner who is authorized to prescribe controlled substances pursuant to § 54.1-2957.01 may issue prescriptions or provide manufacturers' professional samples for controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) in good faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

H. A licensed physician assistant who is authorized to prescribe controlled substances pursuant to

§ 54.1-2952.1 may issue prescriptions or provide manufacturers' professional samples for controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) in good faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

I. A TPA-certified optometrist who is authorized to prescribe controlled substances pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 may issue prescriptions in good faith or provide manufacturers' professional samples to his patients for medicinal or therapeutic purposes within the scope of his professional practice for the drugs specified on the TPA-Formulary, established pursuant to § 54.1-3223, which shall be limited to (i) analgesics included on Schedule II controlled substances as defined in § 54.1-3448 of the Drug Control Act (§ 54.1-3400 et seq.) consisting of hydrocodone in combination with acetaminophen; (ii) oral analgesics included in Schedules III through VI, as defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.), which are appropriate to relieve ocular pain; (iii) other oral Schedule VI controlled substances, as defined in § 54.1-3455 of the Drug Control Act, appropriate to treat diseases and abnormal conditions of the human eye and its adnexa; (iv) topically applied Schedule VI drugs, as defined in § 54.1-3455 of the Drug Control Act; and (v) intramuscular administration of epinephrine for treatment of emergency cases of anaphylactic shock.

J. The requirement for a bona fide practitioner-patient relationship shall be deemed to be satisfied by a member or committee of a hospital's medical staff when approving a standing order or protocol for the administration of influenza vaccinations and pneumococcal vaccinations in a hospital in compliance with § 32.1-126.4.

K. Notwithstanding any other provision of law, a prescriber may authorize a registered nurse or licensed practical nurse to approve additional refills of a prescribed drug for no more than 90 consecutive days, provided that (i) the drug is classified as a Schedule VI drug; (ii) there are no changes in the prescribed drug, strength, or dosage; (iii) the prescriber has a current written protocol, accessible by the nurse, that identifies the conditions under which the nurse may approve additional refills; and (iv) the nurse documents in the patient's chart any refills authorized for a specific patient pursuant to the protocol and the additional refills are transmitted to a pharmacist in accordance with the allowances for an authorized agent to transmit a prescription orally or by facsimile pursuant to subsection C of § 54.1-3408.01 and regulations of the Board.

2. That the Board of Pharmacy shall conduct a review of Schedule VI controlled substances and report to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by December 31, 2023, any Schedule VI substances that the General Assembly may want to consider rescheduling due to potential risk of abuse by a patient if prescribed in accordance with the standard of care for asynchronous telemedicine interactions.