VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 906

An Act to amend and reenact §§ 32.1-87 and 54.1-3408 of the Code of Virginia, relating to prescription forms and generic drugs.

[H 2847]

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-87 and 54.1-3408 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-87. Use of Formulary.

A. Use of the Voluntary Formulary by professional and institutional providers of health care shall be voluntary. The prescription form shall include two boxes, one labelled "Voluntary Formulary Permitted" and the other labelled "Dispense As Written." A prescriber may indicate his permission for the dispensing of a drug product included in the Formulary upon signing a prescription form and marking the box labelled "Voluntary Formulary Permitted." A Voluntary Formulary product shall be dispensed if the prescriber fails to indicate his preference. *Whenever a pharmacist dispenses a Voluntary Formulary product when a prescription is written for a brand name product, the pharmacist shall label the drug with the generic name followed by the words "generic for" followed by the brand name of the drug for which the prescription is written.* If no Voluntary Formulary product is immediately available, or if the patient objects to the dispensing of a generic drug, the pharmacist may dispense a brand name drug.

On and after July 1, 1993, printed prescription forms shall provide:

"☐ Dispense As Written
☐ Voluntary Formulary Permitted

.....
Signature of prescriber

If neither box is marked, a Voluntary Formulary product must be dispensed."

If a prescriber orders a drug listed in the Formulary by its generic name, the pharmacist shall dispense a drug product from among those listed in the Formulary.

In the case of an oral prescription, the prescriber's oral dispensing instructions shall be followed. If the pharmacist dispenses a drug product other than the brand name prescribed, he shall so apprise the purchaser and shall indicate, unless otherwise directed by the prescriber, on both his permanent record and the prescription label the brand name or, in the case of a generic drug product, the name of the manufacturer or distributor.

B. When a pharmacist dispenses a drug product other than the drug product prescribed under the provisions of subsection A hereof pursuant to the Formulary, the drug product dispensed shall be at a lower retail price than that of the drug product prescribed. Such retail price shall not exceed the usual and customary retail price charged by the pharmacist for such generic or equivalent drug product dispensed.

The selection of such drug product shall be the responsibility of the pharmacist dispensing the product and no employer, agent or other person may require the dispensing of a particular drug product which in the professional judgment of the dispensing pharmacist is not in the best interest of the patient.

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician's assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice. The practitioner may prescribe, on a written prescription or on oral prescription as authorized by this chapter, and administer drugs and devices, or he may cause them to be administered by a nurse, physician's assistant or intern under his direction and supervision, or a practitioner may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the practitioner or a pharmacist or a practitioner may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification.

Pursuant to an oral or written order or standing protocol issued by the practitioner within the course of his professional practice, a practitioner may authorize registered nurses and licensed practical nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

A practitioner may authorize the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, by registered nurses or licensed practical nurses under the immediate and direct supervision of a registered nurse, pursuant to a protocol approved by the Board of Nursing. A practitioner acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a nurse when the prescriber is not physically present.

A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

No written prescription order form shall include more than one prescription. This provision shall not apply, however, to the entry of any order on a patient's chart in any hospital or any long-term care facility, as defined in Board regulations, in Virginia or to a prescription ordered through the pharmacy operated by the Department of Corrections, the central pharmacy of the Department of Health, or the central outpatient pharmacy operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Such a prescription shall be written, dated, and signed by the person prescribing on the day when issued, and shall bear the full name and address of the patient for whom the drug is prescribed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered.

This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (ii) a resident of any adult care residence which is licensed by the Department of Social Services; (iii) a resident of the Virginia Rehabilitation Center for the Blind; (iv) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (v) a program participant of an adult day-care center licensed by the Department of Social Services; or (vi) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

Nothing in this title shall prohibit the administration of normally self-administered oral or topical drugs by unlicensed individuals to a person in his private residence.

This section shall not interfere with any prescriber issuing prescriptions in compliance with the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions. This section shall not prohibit a prescriber from using preprinted prescriptions for drugs classified in Schedule VI if all requirements concerning dates, signatures, and other information specified above are otherwise fulfilled.

B. The written prescription referred to in subsection A of this section shall be written with ink or individually typed and each prescription shall be manually signed by the prescriber. The prescription may be prepared by an agent for his signature. The prescription shall contain the name, address, telephone number, and federal controlled substances registration number assigned to the prescriber. The prescriber's information shall be either preprinted upon the prescription blank, typewritten, rubber stamped, or printed by hand.

The oral prescription referred to in subsection A of this section shall be transmitted to the pharmacy of the patient's choice by the prescriber or his authorized agent. For the purposes of this section, an authorized agent of the prescriber shall be an employee of the prescriber who is under his immediate and personal supervision, or if not an employee, an individual who holds a valid license allowing the administration or dispensing of drugs and who is specifically directed by the prescriber.

C. Pursuant to § 32.1-87, the prescription form shall include two boxes, one labelled "Voluntary Formulary Permitted" and the other labelled "Dispense As Written." A prescriber may indicate his permission for the dispensing of a drug product included in the Formulary upon signing a prescription form and marking the box labelled "Voluntary Formulary Permitted." A Voluntary Formulary product shall be dispensed if the prescriber fails to indicate his preference. *Whenever a pharmacist dispenses a Voluntary Formulary product when a prescription is written for a brand name product, the pharmacist shall label the drug with the generic name followed by the words "generic for" followed by the brand name of the drug for which the prescription is written.* If no Voluntary Formulary product is immediately available, or if the patient objects to the dispensing of a generic drug, the pharmacist may dispense a brand name drug. On and after July 1, 1993, printed prescription forms shall provide:

"☐ Dispense As Written

☐ Voluntary Formulary Permitted

.....
Signature of prescriber

If neither box is marked, a Voluntary Formulary product must be dispensed."

D. Prescribers' orders, whether written as chart orders or prescriptions, for Schedules II, III, IV and V controlled drugs to be administered to (i) patients or residents of long-term care facilities served by a Virginia pharmacy from a remote location or (ii) patients receiving parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion therapy and served by a home infusion pharmacy from a remote location, may be transmitted to that remote pharmacy by an electronic communications device over telephone lines which send the exact image to the receiver in hard-copy form, and such facsimile copy shall be treated as a valid, original prescription order.