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SENATE BILL NO. 1195

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact § 54.1-2523 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-2521.1 and 54.1-2523.2, relating to the Prescription Monitoring Program.

Patrons—Puckett; Delegate: Bowling

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2523 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 54.1-2521.1 and 54.1-2523.2 as follows:

§ 54.1-2521.1. Prescribing covered substances for more than 90 days.

Upon prescribing a covered substance for a period of 90 days or greater, the prescriber of such covered substance shall submit a request for information on the recipient for the purpose of determining the validity of the prescription. Such requests shall be made at least annually for each recipient of such prescription.

§ 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. 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 designated by the superintendent of the Department of State Police 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' Intervention Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title.

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 dispenser or specific prescriber to an agent of the United States Drug Enforcement Administration with authority to conduct drug diversion investigations.

5. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of determining the validity of a long-term prescription made to the recipient when such recipient is either under care and treatment by the prescriber or the prescriber is initiating treatment of such recipient, and the recipient has been prescribed a covered substance for a period of 90 days or greater.

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.

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 initiating treatment of such recipient~~, and the prescriber has obtained written consent to such disclosure from 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 history to assist the dispenser in determining the validity of a prescription in accordance with

§ 54.1-3303 when the recipient is seeking a covered substance from the dispenser or the facility in which the dispenser practices. ~~Dispensers shall provide notice to patients, in a manner specified by the Director in regulation, that such information may be requested by them from the Prescription Monitoring Program.~~ *In a manner specified by the Director in regulation, notice shall be given to patients that information may be requested by the dispenser from the Prescription Monitoring Program.*

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

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

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

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

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

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

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

§ 54.1-2523.2. Authority to access database.

Any prescriber authorized to access the information in the possession of the Prescription Monitoring program pursuant to this chapter may, pursuant to regulations promulgated by the Director to implement the provisions of this section, delegate such authority to up to two health care professionals who are (i) licensed, registered, or certified by a health regulatory board under the Department of Health Professions, and (ii) employed at the same facility and under the direct supervision of the prescriber.