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**HOUSE BILL NO. 347**

Offered January 11, 2012

Prefiled January 10, 2012

A *BILL to amend and reenact §§ 54.1-2521, 54.1-2523, 54.1-2523.1, and 54.1-2523.2 of the Code of Virginia, relating to the Prescription Monitoring Program.*

Patron—Miller

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-2521, 54.1-2523, 54.1-2523.1, and 54.1-2523.2 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.

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

5. The date of the dispensing.

6. The prescriber's identifier number.

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.

910. 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. The reports required herein shall be made and transmitted in such manner and format and according to the standards and schedule established in the Department's regulations.

§ 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' Monitoring 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 *recipient*, dispenser, or specific prescriber to an agent of the ~~United States Drug Enforcement Administration~~ *a federal law-enforcement agency* with authority to conduct drug diversion investigations.

C. In accordance with the Department's regulations and applicable federal law and regulations, the Director may, in his discretion, disclose:

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59 1. Information in the possession of the program concerning a recipient who is over the age of 18 to  
60 that recipient.

61 2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of  
62 establishing the treatment history of the specific recipient when such recipient is either under care and  
63 treatment by the prescriber or the prescriber is initiating treatment of such recipient. In a manner  
64 specified by the Director in regulation, notice shall be given to patients that information may be  
65 requested by the prescriber from the Prescription Monitoring Program.

66 3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription  
67 history to assist the dispenser in determining the validity of a prescription in accordance with  
68 § 54.1-3303 when the recipient is seeking a covered substance from the dispenser or the facility in  
69 which the dispenser practices. In a manner specified by the Director in regulation, notice shall be given  
70 to patients that information may be requested by the dispenser from the Prescription Monitoring  
71 Program.

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

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

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

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

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

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

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

101 § 54.1-2523.1. Criteria for indicators of misuse; Director's authority to disclose information;  
102 intervention.

103 The Director shall develop, in consultation with an advisory panel, criteria for indicators of misuse  
104 and a method for analysis of data collected by the Prescription Monitoring Program using the criteria for  
105 indicators of misuse. Upon the development of such criteria and data analysis, the Director may, in  
106 addition to the discretionary disclosure of information pursuant to § 54.1-2523, disclose information  
107 using the criteria that indicates potential misuse by recipients of covered substances to (i) their specific  
108 prescribers for the purpose of intervention to prevent such misuse or abuse or (ii) *an agent designated*  
109 *by the Superintendent of the Department of State Police for the purpose of an investigation into possible*  
110 *drug diversion.*

111 § 54.1-2523.2. Authority to access database.

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