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SENATE BILL NO. 287

Offered January 13, 2016

Prefiled January 7, 2016

A BILL to amend and reenact §§ 54.1-2521, 54.1-2523, and 54.1-2525 of the Code of Virginia, relating to the Prescription Monitoring Program.

Patron—Wexton

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2521, 54.1-2523, and 54.1-2525 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.

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. 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.*

§ 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. Records in possession of the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. 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 who has completed the Virginia State Police Drug Diversion School designated by the superintendent of the Department of State Police or designated by the chief law-enforcement officer of any county, city, or town or campus police department 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.).

3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that

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59 has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of
60 Title 19.2.

61 4. Information relevant to a specific investigation of a specific recipient, dispenser, or prescriber to
62 an agent of a federal law-enforcement agency with authority to conduct drug diversion investigations.

63 5. Information relevant to a specific investigation, supervision, or monitoring of a specific recipient
64 for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.) of Title
65 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title
66 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed the
67 Virginia State Police Drug Diversion School designated by the Director of the Department of
68 Corrections or his designee.

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

71 1. Information in the possession of the program concerning a recipient who is over the age of 18 to
72 that recipient. The information shall be mailed to the street or mailing address indicated on the recipient
73 request form.

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

79 3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription
80 history to assist the dispenser in (i) determining the validity of a prescription in accordance with
81 § 54.1-3303 ~~when the recipient is seeking a covered substance from the dispenser or the facility in~~
82 ~~which the dispenser practices or~~ (ii) *providing clinical consultation on the care and treatment of the*
83 *recipient.* In a manner specified by the Director in regulation, notice shall be given to patients that
84 information may be requested by the dispenser from the Prescription Monitoring Program.

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

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

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

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

103 8. Information relating to prescriptions for covered substances issued by a specific prescriber, which
104 have been dispensed and reported to the Program, to that prescriber.

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

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

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

116 **§ 54.1-2525. Unlawful disclosure of information; disciplinary action authorized; penalties.**

117 A. It shall be unlawful for any person having access to the confidential information in the possession
118 of the program or any data or reports produced by the program to disclose such confidential information
119 except as provided in this chapter. Any person having access to the confidential information in the
120 possession of the program or any data or reports produced by the program who discloses such

confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

B. It shall be unlawful for any person who lawfully receives confidential information from the Prescription Monitoring Program to redisclose or use such confidential information in any way other than the authorized purpose for which the request was made. Any person who lawfully receives information from the Prescription Monitoring Program and discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.

C. Nothing in this section shall prohibit (i) a person who prescribes or dispenses a covered substance required to be reported to the program from redisclosing information obtained from the Program to another prescriber or dispenser who has prescribed or dispensed a covered substance to a recipient or (ii) a person who prescribes a covered substance from placing information obtained from the Program for the purpose of establishing the treatment history of a specific recipient in the recipient's medical record.

D. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall also be grounds for disciplinary action by the relevant health regulatory board.

2. That the provisions of subsection C of § 54.1-2521 of the Code of Virginia as set forth in this act shall become effective on January 1, 2017.