

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 54.1-2523 of the Code of Virginia, relating to Department of*
3 *Corrections; disclosure of information; delivery of controlled substances to prisoners.*

4 [S 1516]
5 Approved

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

7 **1. That § 54.1-2523 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of**
9 **Director.**

10 A. All data, records, and reports relating to the prescribing and dispensing of covered substances to
11 recipients and any abstracts from such data, records, and reports that are in the possession of the
12 Prescription Monitoring Program pursuant to this chapter and any material relating to the operation or
13 security of the program shall be confidential and shall be exempt from the Virginia Freedom of
14 Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 2 of § 2.2-3705.5. Records in possession of
15 the Prescription Monitoring Program shall not be available for civil subpoena, nor shall such records be
16 disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be
17 deemed admissible as evidence in any civil proceeding for any reason. Further, the Director shall only
18 have discretion to disclose any such information as provided in subsections B and C.

19 B. Upon receiving a request for information in accordance with the Department's regulations and in
20 compliance with applicable federal law and regulations, the Director shall disclose the following:

21 1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or
22 prescriber to an agent who has completed the Virginia State Police Drug Diversion School designated by
23 the superintendent of the Department of State Police or designated by the chief law-enforcement officer
24 of any county, city, or town or campus police department to conduct drug diversion investigations
25 pursuant to § 54.1-3405.

26 2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific
27 person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a
28 health regulatory board; information relevant to a disciplinary proceeding before a health regulatory
29 board or in any subsequent trial or appeal of an action or board order to designated employees of the
30 Department of Health Professions; or to designated persons operating the Health Practitioners'
31 Monitoring Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.).

32 3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that
33 has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of
34 Title 19.2.

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

37 5. Information relevant to a specific investigation, supervision, or monitoring of a specific recipient
38 for purposes of the administration of criminal justice pursuant to Chapter 1 (§ 9.1-100 et seq.) of Title
39 9.1 to a probation or parole officer as described in Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title
40 53.1 or a local community-based probation officer as described in § 9.1-176.1 who has completed the
41 Virginia State Police Drug Diversion School designated by the Director of the Department of
42 Corrections or his designee.

43 *6. Information relevant to a specific investigation of a specific individual into a possible delivery of a*
44 *controlled substance in violation of § 18.2-474.1 to an investigator for the Department of Corrections*
45 *who has completed the Virginia State Police Drug Diversion School and who has been designated by*
46 *the Director of the Department of Corrections or his designee.*

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

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

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

57 3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription
58 history to assist the dispenser in (i) determining the validity of a prescription in accordance with
59 § 54.1-3303 or (ii) providing clinical consultation on the care and treatment of the recipient. In a manner
60 specified by the Director in regulation, notice shall be given to patients that information may be
61 requested by the dispenser from the Prescription Monitoring Program.

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

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

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

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

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

82 9. Information about a specific recipient who is a member of a Virginia Medicaid managed care
83 program to a physician or pharmacist licensed in the Commonwealth and employed by the Virginia
84 Medicaid managed care program or to his clinical designee who holds a multistate licensure privilege to
85 practice nursing or a license issued by a health regulatory board within the Department of Health
86 Professions and is employed by the Virginia Medicaid managed care program. Such information shall
87 only be used to determine eligibility for and to manage the care of the specific recipient in a Patient
88 Utilization Management Safety or similar program. Notice shall be given to recipients that information
89 may be requested by a licensed physician or pharmacist employed by the Virginia Medicaid managed
90 care program from the Prescription Monitoring Program.

91 10. (Expires July 1, 2022) Information to the Board of Medicine about prescribers who meet a
92 certain threshold for prescribing covered substances for the purpose of requiring relevant continuing
93 education. The threshold shall be determined by the Board of Medicine in consultation with the
94 Program.

95 11. Information about a specific recipient who is currently eligible for and receiving medical
96 assistance from the Department of Medical Assistance Services to a physician or pharmacist licensed in
97 the Commonwealth or to his clinical designee who holds a multistate licensure privilege to practice
98 nursing or a license issued by a health regulatory board within the Department of Health Professions and
99 is employed by the Department of Medical Assistance Services.

100 Such information shall be used only to determine eligibility for and to manage the care of the
101 specific recipient in a Patient Utilization Management Safety or similar program. Notice shall be given
102 to recipients that information may be requested by a licensed physician or pharmacist employed by the
103 Department of Medical Assistance Services from the Prescription Monitoring Program.

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

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

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