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H.745

Introduced by Representative Pugh of South Burlington

Referred to Committee on

Date:

Subject: Health; prescription drugs; Vermont prescription monitoring system

Statement of purpose: This bill proposes to require health care providers to search the VPMS prior to prescribing a controlled substance. In addition, it expands the category of people who may access the VPMS. This bill also creates a unified pain management system advisory council.

An act relating to the Vermont prescription monitoring system

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. § 4282 is amended to read:

§ 4282. DEFINITIONS

As used in this chapter:

\* \* \*

(2) "Health care provider" shall mean an individual licensed, certified, or authorized by law to provide professional health care service in this state or any other state to an individual during that individual's medical or dental care, treatment, or confinement.

\* \* \*

1 Sec. 2. 18 V.S.A. § 4283 is amended to read:

2 § 4283. CREATION; IMPLEMENTATION

3 (a) Contingent upon the receipt of funding, the department may establish an  
4 electronic database and reporting system for monitoring Schedules II, III, and  
5 IV controlled substances, as defined in 21 C.F.R. Part 1308, as amended and as  
6 may be amended, that are dispensed within the state of Vermont by a health  
7 care provider or dispenser or dispensed to an address within the state by a  
8 pharmacy licensed by the Vermont board of pharmacy.

9 (b) As required by the department, every dispenser who is licensed by the  
10 Vermont board of pharmacy shall report to the department in a timely manner  
11 data for each controlled substance in Schedules II, III, and IV, as amended and  
12 as may be amended, dispensed to a patient within Vermont. Reporting shall not  
13 be required for:

14 (1) a drug administered directly to a patient; or

15 (2) a drug dispensed by a health care provider at a facility licensed by  
16 the department, provided that the quantity dispensed is limited to an amount  
17 adequate to treat the patient for a maximum of 48 hours.

18 (c) Data for each controlled substance that is dispensed shall include the  
19 following:

20 (1) patient identifier, which may include the patient's name and date of  
21 birth;

- 1 (2) drug dispensed;
- 2 (3) date of dispensing;
- 3 (4) quantity and dosage dispensed;
- 4 (5) the number of days' supply;
- 5 (6) health care provider; and
- 6 (7) dispenser.

7 (d) The data shall be provided in the electronic format defined by the  
8 department. To the extent possible, the format shall not require data entry in  
9 excess of that required in the regular course of business. Electronic  
10 transmission is not required if a waiver has been granted by the department to  
11 an individual dispenser. The department shall strive to create VPMS in a  
12 manner that will enable real-time transmittal to VPMS and real-time retrieval  
13 of information stored in VPMS.

14 (e) All health care providers licensed in this state shall search the VPMS  
15 before prescribing or refilling prescriptions for a controlled substance in  
16 Schedules II, III, and IV.

17 (f) It is not the intention of the department that a health care provider or a  
18 dispenser shall have to pay a fee or tax or purchase hardware or proprietary  
19 software required by the department specifically for the use, establishment,  
20 maintenance, or transmission of the data. The department shall seek grant

1 funds and take any other action within its financial capability to minimize any  
2 cost impact to health care providers and dispensers.

3 ~~(f)~~(g) The department shall purge from VPMS all data that is more than six  
4 years old.

5 ~~(g)~~(h) The commissioner shall develop and provide advisory notices, which  
6 shall make clear that all prescriptions for controlled drugs in Schedules II, III,  
7 and IV are entered into a statewide database in order to protect the public. The  
8 notices shall be distributed at no cost to dispensers and health care providers  
9 who are subject to this chapter.

10 ~~(h)~~(i)(1) A dispenser shall be subject to discipline by the board of  
11 pharmacy or by the applicable licensing entity if the dispenser intentionally  
12 fails to comply with the requirements of subsection (b), (c), or (d) of this  
13 section.

14 (2) A health care provider licensed in this state shall be subject to  
15 discipline by the applicable licensing authority if the health care provider  
16 intentionally fails to comply with the requirements of subsection (e) of this  
17 section.

18 Sec. 3. 18 V.S.A. § 4284 is amended to read:

19 § 4284. PROTECTION AND DISCLOSURE OF INFORMATION

20 (a) The data collected pursuant to this chapter shall be confidential, except  
21 as provided in this chapter, and shall not be subject to public records law. The

1 department shall maintain procedures to protect patient privacy, ensure the  
2 confidentiality of patient information collected, recorded, transmitted, and  
3 maintained, and ensure that information is not disclosed to any person except  
4 as provided in this section.

5 (b) The department shall be authorized to provide data to only the  
6 following persons:

7 (1) A patient or that person's health care provider, or both, when VPMS  
8 reveals that a patient may be receiving more than a therapeutic amount of one  
9 or more regulated substances.

10 (2) A health care provider or dispenser who requests information and  
11 certifies that the requested information is for the purpose of providing medical  
12 or pharmaceutical treatment to a bona fide current patient.

13 (3) A designated representative of a board responsible for the licensure,  
14 regulation, or discipline of health care providers or dispensers pursuant to a  
15 bona fide specific investigation.

16 (4) A patient for whom a prescription is written, insofar as the  
17 information relates to that patient.

18 (5) The relevant occupational licensing or certification authority if the  
19 commissioner reasonably suspects fraudulent or illegal activity by a health care  
20 provider. The licensing or certification authority may report the data that are

1 the evidence for the suspected fraudulent or illegal activity to a trained law  
2 enforcement officer.

3 (6)(A) The commissioner of public safety, personally, if the  
4 commissioner of health personally makes the disclosure, has consulted with at  
5 least one of the patient's health care providers, and believes that the disclosure  
6 is necessary to avert a serious and imminent threat to a person or the public; or

7 (B) The commissioner of public safety, personally, when he or she  
8 requests data from the commissioner of health for the purpose of averting what  
9 in the commissioner of public safety's discretion is a serious and imminent  
10 threat to a person or to the public.

11 (7) Personnel or contractors, as necessary for establishing and  
12 maintaining the VPMS.

13 (8) The medical director of the department of Vermont health access for  
14 the purposes of Medicaid quality assurance, utilization, and federal monitoring  
15 requirements with respect to Medicaid recipients for whom a Medicaid claim  
16 for a controlled substance in Schedule II, III, or IV has been submitted.

17 (9) A medical examiner from the office of the chief medical examiner  
18 for the purpose of conducting an investigation or inquiry into the cause,  
19 manner, and circumstances of an individual's death.

20 (10) A duly authorized representative of a department or agency in  
21 another state, territory, or possession of the United States that maintains

1 prescription information in a data system with privacy, security, and disclosure  
2 protections consistent with this chapter and pursuant to a reciprocal agreement  
3 to share prescription monitoring information with the department of health as  
4 described in section 4288 of this title.

5 (c) A person who receives data or a report from VPMS or from the  
6 department shall not share that data or report with any other person or entity  
7 not eligible to receive that data pursuant to subsection (b) of this section.  
8 Nothing shall restrict the right of a patient to share his or her own data.

9 (d) The commissioner shall offer health care providers and dispensers  
10 training in the proper use of information they may receive from VPMS.  
11 Training may be provided in collaboration with professional associations  
12 representing health care providers and dispensers.

13 (e) A trained law enforcement officer who may receive information  
14 pursuant to this section shall not have access to VPMS except for information  
15 provided to the officer by the licensing or certification authority.

16 (f) The department is authorized to use information from VPMS for  
17 research and public health promotion purposes provided that data are  
18 aggregated or otherwise de-identified.

19 (g) Knowing disclosure of transmitted data to a person not authorized by  
20 subsection (b) of this section, or obtaining information under this section not  
21 relating to a bona fide specific investigation, shall be punishable by

1 imprisonment for not more than one year or a fine of not more than \$1,000.00,  
2 or both, in addition to any penalties under federal law.

3 Sec. 4. 18 V.S.A. § 4286 is amended to read:

4 § 4286. ADVISORY COMMITTEE

5 \* \* \*

6 (d) The committee shall issue a report to the senate and house committees  
7 on judiciary, the senate committee on health and welfare, and the house  
8 committee on human services no later than January 15th in 2008, 2010, ~~and~~  
9 2012, and 2014.

10 (e) This section shall sunset on July 1, 2014, ~~2012~~, and thereafter the  
11 committee shall cease to exist.

12 Sec. 5. 18 V.S.A. § 4287 is amended to read:

13 § 4287. RULEMAKING

14 The department shall adopt rules for the implementation of VPMS as  
15 defined in this chapter consistent with 45 C.F.R. Part 164, as amended and as  
16 may be amended, that limit the disclosure to the minimum information  
17 necessary for purposes of this act ~~and shall keep the senate and house~~  
18 ~~committees on judiciary, the senate committee on health and welfare, and the~~  
19 ~~house committee on human services advised of the substance and progress of~~  
20 ~~initial rulemaking pursuant to this section.~~

1 Sec. 6. 18 V.S.A. § 4288 is added to read:

2 § 4288. RECIPROCAL AGREEMENTS

3 The department of health may enter into reciprocal agreements with other  
4 states, territories, or possessions of the United States that have prescription  
5 monitoring programs consistent with privacy, security, and disclosure  
6 protections consistent with this chapter.

7 Sec. 7. UNIFIED PAIN MANAGEMENT SYSTEM ADVISORY COUNCIL

8 (a) There is hereby created a unified pain management system advisory  
9 council for the purpose of advising the commissioner of health on matters  
10 relating to the appropriate use of controlled substances in treating chronic pain  
11 and addiction and in preventing prescription drug abuse.

12 (b) The unified pain management system advisory council shall consist of  
13 the following members:

14 (1) the commissioner of health or designee, who shall serve as chair;

15 (2) the deputy commissioner of health for alcohol and drug abuse  
16 programs or designee;

17 (3) the commissioner of mental health or designee;

18 (4) the commissioner of public safety or designee;

19 (5) the chair of the board of medical practice or designee;

20 (6) a representative of the Vermont state dental society;

21 (7) a representative of the Vermont board of pharmacy;

1           (8) a faculty member from the academic detailing program at the  
2           University of Vermont's College of Medicine;

3           (9) a faculty member from the University of Vermont's College of  
4           Medicine with expertise in the treatment of addiction or chronic pain  
5           management;

6           (10) a representative of the Vermont Medical Society;

7           (11) a representative of the Vermont Ethics Network;

8           (12) a representative of the Hospice and Palliative Care Council of  
9           Vermont; and

10          (13) a representative of the office of the health care ombudsman.

11          (c) Advisory council members who are not employed by the state shall be  
12          entitled to per diem and expenses as provided by 32 V.S.A. § 1010.

13          (d) A majority of the members of the advisory council shall constitute a  
14          quorum. The advisory council shall act only by vote of a majority of its entire  
15          membership and only at meetings called by the chair or by any three of the  
16          members.

17          (e) The commissioner of health may seek grants and other sources of  
18          funding from public and private sources to support the work of the advisory  
19          council, including funds from manufacturers of prescribed products, as defined  
20          in subsection 4631a(a) of this title, provided manufacturers neither attach

1 conditions to the use of funds nor use the advisory council's receipt of funds to  
2 promote manufacturers' products.

3 (f) To the extent funds are available, the advisory council shall have the  
4 following duties:

5 (1) to develop and recommend principles and components of a unified  
6 pain management system, including the appropriate use of controlled  
7 substances in treating chronic pain and addiction and in preventing prescription  
8 drug abuse; and

9 (2) to identify and recommend components of evidence-based training  
10 modules and minimum requirements for the continuing education of all  
11 licensed health care providers in the state who treat chronic pain or addiction  
12 or prescribe controlled substances in Schedule II, III, or IV consistent with a  
13 unified pain management system.

14 (g) The commissioner of health may designate subcommittees as  
15 appropriate to carry out the work of the advisory council.

16 (h) On or before January 15, 2013, the advisory council shall submit its  
17 recommendations to the senate committee on health and welfare, the house  
18 committee on human services, and the house committee on health care.

1       Sec. 8. EFFECTIVE DATES

2           This section and Sec. 4 of this act shall take effect on passage and shall  
3       apply retroactively as of January 15, 2012. All other sections of this act shall  
4       take effect on July 1, 2012.