~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 29, 2017

**H. 3824**

Introduced by Reps. Henderson, Bedingfield, Fry, Huggins, Johnson, Hewitt, Crawford, Duckworth, Allison, Arrington, Forrester, Tallon, Hamilton, Felder, Elliott, Jordan, B. Newton, Martin, Erickson, Jefferson, Cobb‑Hunter, Govan, Long, Putnam, Cogswell and Collins

S. Printed 3/29/17--H. [SEC 3/30/17 4:16 PM]

Read the first time February 22, 2017.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 3824) to amend the Code of Laws of South Carolina, 1976, by adding Section 44‑53‑1645 so as to require health care practitioners to review a patient’s controlled substance, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, SECTION 1, Section 44-53-1645, page 2, by striking Section 44-53-1645(B)(3) and inserting:

/ (3) a practitioner prescribing a Schedule II controlled substance for a patient with whom the practitioner has an established relationship for the treatment of a chronic condition; however, the practitioner must review the patient’s controlled substance history maintained in the prescription monitoring program at least every three months; /

Renumber sections to conform.

Amend title to conform.

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced February 22, 2017**

**State Expenditure**

This bill requires practitioners authorized to prescribe controlled substances, or their delegate, to review a patient’s controlled substance prescription history, maintained in the prescription monitoring program, before issuing a prescription for a Schedule II controlled substance. Consultations between practitioner and delegate must be recorded in the patient’s medical record. Exceptions to this review requirement are allowed for treating hospice-certified patients or patients in a skilled nursing facility, for chronic pain treatment under certain circumstances, and for supplies of less than five days. An exception is also allowed when treatment is imperative and the practitioner is unable to access the prescription monitoring program, provided that this situation is documented in the patient’s medical record. Violations of the review requirements are to be reported to the appropriate board for disciplinary action.

The bill requires dentists, optometrists, physician assistants, podiatrists, and pharmacists to complete at least two hours of continuing education related to the approved procedures for prescribing and monitoring controlled substances listed in Schedules II, III, and IV.

**Department of Health and Environmental Control.** The department reports that this bill would have no expenditure impact on the general fund, federal funds, or other funds as the agency already maintains the prescription monitoring program. The primary impact of this bill is on practitioners prescribing controlled substances who must comply with the new requirements.

**Department of Labor, Licensing and Regulation.** The department reports that this bill would have no expenditure impact on the general fund, federal funds, or other funds as regulatory procedures are already in place that would allow the various boards to verify that the educational requirements imposed by the bill have been completed by licensees.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑53‑1645 SO AS TO REQUIRE HEALTH CARE PRACTITIONERS TO REVIEW A PATIENT’S CONTROLLED SUBSTANCE PRESCRIPTION HISTORY, AS MAINTAINED IN THE PRESCRIPTION DRUG MONITORING PROGRAM, BEFORE PRESCRIBING A SCHEDULE II CONTROLLED SUBSTANCE, WITH EXCEPTIONS; TO AMEND SECTION 44‑53‑1630, AS AMENDED, RELATING TO THE PRESCRIPTION DRUG MONITORING PROGRAM, SO AS TO ADD A DEFINITION OF “PRACTITIONER”; TO AMEND SECTION 44‑53‑1640, AS AMENDED, RELATING TO THE PRESCRIPTION DRUG MONITORING PROGRAM, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 44‑53‑1680, AS AMENDED, RELATING TO PENALTIES FOR VIOLATING REQUIREMENTS OF THE PRESCRIPTION DRUG MONITORING PROGRAM, SO AS TO ESTABLISH A PENALTY IF A PRACTITIONER OR AUTHORIZED DELEGATE FAILS TO REVIEW A PATIENT’S CONTROLLED SUBSTANCE PRESCRIPTION HISTORY, AS MAINTAINED IN THE PRESCRIPTION DRUG MONITORING PROGRAM, BEFORE PRESCRIBING A SCHEDULE II CONTROLLED SUBSTANCE; BY ADDING SECTION 40‑15‑145 SO AS TO ESTABLISH EDUCATIONAL REQUIREMENTS FOR DENTISTS ADDRESSING THE PRESCRIPTION AND MONITORING OF CERTAIN CONTROLLED SUBSTANCES; TO AMEND SECTIONS 40‑37‑240, 40‑47‑965, AS AMENDED, AND 40‑51‑140, RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN HEALTH CARE PRACTITIONERS, SO AS TO ADD REQUIREMENTS ADDRESSING THE PRESCRIPTION AND MONITORING OF CERTAIN CONTROLLED SUBSTANCES; AND TO AMEND SECTION 40‑43‑130, RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR PHARMACISTS, SO AS TO ADD REQUIREMENTS ADDRESSING CERTAIN CONTROLLED SUBSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 15, Chapter 53, Title 44 of the 1976 Code is amended by adding:

“Section 44‑53‑1645. (A) A practitioner, or the practitioner’s authorized delegate, shall review a patient’s controlled substance prescription history, as maintained in the prescription monitoring program, before the practitioner issues a prescription for a Schedule II controlled substance. If an authorized delegate reviews a patient’s controlled substance prescription history, the practitioner must consult with the authorized delegate regarding the prescription history before issuing a prescription for a Schedule II controlled substance. The consultation must be documented in the patient’s medical record.

(B) The requirements of this section do not apply to:

(1) a practitioner issuing a prescription for a Schedule II controlled substance to treat a hospice‑certified patient;

(2) a practitioner issuing a prescription for a Schedule II controlled substance that does not exceed a five‑day supply for a patient;

(3) a practitioner prescribing a Schedule II controlled substance for a patient with whom the practitioner has an established relationship for the treatment of chronic pain; however, the practitioner must review the patient’s controlled substance prescription history at least every three months;

(4) a practitioner approving the administration of a Schedule II controlled substance by a licensed healthcare provider;

(5) a practitioner prescribing a Schedule II controlled substance for a patient in a skilled nursing facility, nursing home, community residential care facility, or an assisted living facility in which medications are provided and monitored by staff; or

(6) a practitioner who is temporarily unable to access the prescription monitoring program due to exigent circumstances; however, the exigent circumstances and the potential adverse impact to the patient if the prescription is not issued timely must be documented in the patient’s medical record.

(C) A practitioner is deemed to be in compliance with this section if the practitioner utilizes technology that automatically displays the patient’s controlled substance prescription history from the prescription monitoring program in the practitioner’s electronic medical record system. The practitioner must be able to demonstrate that this technology has been deployed in his practice, but no additional documentation is required in the patient’s medical record.”

SECTION 2. Section 44‑53‑1630 of the 1976 Code, as last amended by Act 244 of 2014, is further amended to read:

“Section 44‑53‑1630. As used in this ~~section~~ article:

(1) ‘Controlled substances’ means those substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44‑53‑210, 44‑53‑230, 44‑53‑250, and 44‑53‑270.

(2) ‘Dispenser’ means a person who delivers a Schedule II‑IV controlled substance to the ultimate user, but does not include:

(a) a licensed hospital pharmacy that distributes controlled substances for the purpose of inpatient hospital care or dispenses prescriptions for controlled substances at the time of discharge from the hospital;

(b) a practitioner or other authorized person who administers these controlled substances; or

(c) a wholesale distributor of a Schedule II‑IV controlled substance.

(3) ‘Drug control’ means the Department of Health and Environmental Control, Bureau of Drug Control.

(4) ‘Patient’ means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, or both.

(5) ‘Authorized delegate’ means an individual who is approved as having access to the prescription monitoring program and who is directly supervised by an authorized practitioner or pharmacist.

(6) ‘Practitioner’ means an individual authorized pursuant to state and federal law to prescribe controlled substances.”

SECTION 3. Section 44‑53‑1640(A) of the 1976 Code is amended to read:

“(A) The Department of Health and Environmental Control, Bureau of Drug Control ~~may~~ shall establish and maintain a program to monitor the prescribing and dispensing of all Schedule II, III, and IV controlled substances by professionals licensed to prescribe or dispense these substances in this State.”

SECTION 4. Section 44‑53‑1680 of the 1976 Code, as last amended by Act 244 of 2014, is further amended to read:

“Section 44‑53‑1680.(A) A dispenser or authorized delegate who knowingly fails to submit prescription monitoring information to drug control as required by this article, or who knowingly submits incorrect prescription information, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

(B) A person ~~or persons authorized to have prescription monitoring information pursuant to this article~~ who knowingly discloses ~~this~~ prescription monitoring information in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(C) A person ~~or persons authorized to have prescription monitoring information pursuant to this article~~ who knowingly uses ~~this~~ prescription monitoring information in a manner or for a purpose in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(D) A pharmacist or practitioner, licensed in Title 40, who knowingly discloses prescription monitoring information in a manner or for a purpose in violation of this article shall be reported to his respective board for disciplinary action.

(E) Nothing in this chapter requires a pharmacist ~~or practitioner~~ to obtain information about a patient from the prescription monitoring program. A practitioner or authorized delegate of a practitioner who knowingly fails to review a patient’s controlled substance prescription history, as maintained in the prescription monitoring program, or a practitioner who knowingly fails to consult with his authorized delegate regarding a patient’s controlled substance prescription history before issuing a prescription for a Schedule II controlled substance, as required by this article, must be reported to his respective board for disciplinary action.

(F) A pharmacist or practitioner does not have a duty and must not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or practitioner did or did not seek or obtain information from the prescription monitoring program. A pharmacist or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving information from the prescription monitoring program.”

SECTION 5. Article 1, Chapter 15, Title 40 of the 1976 Code is amended by adding:

“Section 40‑15‑145. In addition to any other continuing education required by the board or pursuant to law, including Regulation 39‑5, South Carolina Code of State Regulations, a dentist authorized pursuant to state and federal law to prescribe controlled substances shall complete at least two hours of continuing education every two years related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44‑53‑210, 44‑53‑230, and 44‑53‑250.”

SECTION 6. Section 40‑37‑240(D)(2) of the 1976 Code is amended to read:

“(2) Continuing education instruction must be on subjects relative to optometry, exclusive of office management or administration, at board‑approved and recognized educational seminars and courses or accredited institutions of learning. Four of the forty hours may be for courses directly related to mandated health care programs including, but not limited to, HIPAA, Medicare and Medicaid, and Ethics or Jurisprudence. Sixteen of the forty hours must be pharmacology or pathology related. Satisfactory proof of compliance with this requirement is a prerequisite for biennial license renewal. If an optometrist is authorized pursuant to state and federal law to prescribe controlled substances, two of the requisite hours of continuing education must be related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44‑53‑210, 44‑53‑230, and 44‑53‑250.”

SECTION 7. Section 40‑47‑965(B)(3) of the 1976 Code is amended to read:

“(3) every two years, the physician assistant shall provide documentation of four continuing education contact hours in prescribing controlled substances acceptable to the board. If a physician assistant is authorized pursuant to state and federal law to prescribe controlled substances, two of the requisite hours of continuing education must be related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44‑53‑210, 44‑53‑230, and 44‑53‑250;”

SECTION 8. Section 40‑51‑140 of the 1976 Code is amended to read:

“Section 40‑51‑140. A person licensed to practice podiatry must pay an annual renewal license fee which must be established in regulation by the board, annually must complete twelve hours of continuing medical education through a program approved by the South Carolina Board of Podiatry Examiners, and must submit documentation to the board of completion of this education. If a podiatrist is authorized pursuant to state and federal law to prescribe controlled substances, two of the requisite hours of continuing education every two years must be related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44‑53‑210, 44‑53‑230, and 44‑53‑250. If the renewal fee is not accompanied with the appropriate continuing education documentation, the license may not be renewed and is considered late and subject to the penalties promulgated by the board in regulation. This continuing education requirement takes effect and applies to licenses being renewed beginning in 1997. If the renewal fee is not paid within two months after the date of notification by the secretary that the fee is due, the license of the person failing to pay shall be considered late and a penalty imposed as determined by regulation. After an additional sixty days a nonrenewed license must be suspended or revoked and must be reissued only by a majority vote of the Board of Podiatry Examiners and upon payment of a late fee and penalties established by the board.”

SECTION 9. Section 40‑43‑130(B) of the 1976 Code is amended to read:

“(B) Each licensed pharmacist, as a condition of an active status license renewal, shall complete fifteen hours (1.5 CEU’s) of American Council on Pharmaceutical Education (ACPE) accredited continuing pharmacy education or continuing medical education (CME), Category I, or both, each license year. Of the fifteen hours, a minimum of six hours must be obtained through attendance at lectures, seminars, or workshops. At least fifty percent of the total number of hours required must be in drug therapy or patient management. Every two years, at least two hours of the required continuing education must be related to controlled substances listed in Schedules II, III and IV of the schedules provided for in Sections 44‑53‑210, 44‑53‑230, and 44‑53‑250.”

SECTION 10. This act takes effect upon approval by the Governor.

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