

NO. 205. AN ACT RELATING TO PRESCRIPTION DRUGS AND
SUBSTANCE ABUSE.

(S.90)

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

Sec. 1. 18 V.S.A. chapter 84A is added to read:

CHAPTER 84A. VERMONT PRESCRIPTION MONITORING SYSTEM

§ 4281. LEGISLATIVE INTENT

The general assembly recognizes the important public health benefits of the legal medical use of controlled substances and also the significant risk to public health that can arise due to the abuse of those substances. It is the intent of this chapter to create the Vermont prescription monitoring system, which will provide an electronic database and reporting system for electronic monitoring of prescriptions for Schedules II, III, and IV controlled substances, as defined in 21 C.F.R. Part 1308, as amended and as may be amended, to promote the public health through enhanced opportunities for treatment for and prevention of abuse of controlled substances, without interfering with the legal medical use of those substances.

§ 4282. DEFINITIONS

As used in this chapter:

(1) “Dispenser” shall mean any person who “dispenses” or engages in “dispensing” as those terms are defined in subdivision 2022(5) of Title 26.

(2) “Health care provider” shall mean an individual licensed, certified, or authorized by law to provide professional health care service in this state to

an individual during that individual's medical or dental care, treatment, or confinement.

(3) "Trained law enforcement officer" shall include any officer designated by the department of public safety who has completed a training program established by rule by the department of health, which is designed to ensure that officers have the training necessary to use responsibly and properly any information that they receive from VPMS.

(4) "VPMS" shall mean the Vermont prescription monitoring system established under this chapter.

§ 4283. CREATION; IMPLEMENTATION

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

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

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

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

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

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

(2) drug dispensed;

(3) date of dispensing;

(4) quantity and dosage dispensed;

(5) the number of days' supply;

(6) health care provider; and

(7) dispenser.

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

(e) It is not the intention of the department that a health care provider or a dispenser shall have to pay a fee or tax or purchase hardware or proprietary

software required by the department specifically for the establishment, maintenance, or transmission of the data. The department shall seek grant funds and take any other action within its financial capability to minimize any cost impact to health care providers and dispensers.

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

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

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

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

(a) The data collected pursuant to this chapter shall be confidential, except as provided in this chapter, and shall not be subject to public records law. The department shall maintain procedures to protect patient privacy, ensure the confidentiality of patient information collected, recorded, transmitted, and maintained, and ensure that information is not disclosed to any person except as provided in this section.

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

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

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

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

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

(5) The relevant occupational licensing or certification authority if the commissioner reasonably suspects fraudulent or illegal activity by a health care provider. The licensing or certification authority may report the data that are the evidence for the suspected fraudulent or illegal activity to a trained law enforcement officer.

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

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

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

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

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

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

(g) Knowing disclosure of transmitted data to a person not authorized by subsection (b) of this section, or obtaining information under this section not relating to a bona fide specific investigation, shall be punishable by imprisonment for not more than one year or a fine of not more than \$1,000.00, or both, in addition to any penalties under federal law.

§ 4285. IMMUNITY

A dispenser or health care provider shall be immune from civil, criminal, or administrative liability as a result of any action made in good faith pursuant to and in accordance with this chapter, but nothing in this section shall be construed to establish immunity for the failure to follow standards of professional conduct or the failure to exercise due care in the provision of services.

§ 4286. ADVISORY COMMITTEE

(a)(1) The commissioner shall establish an advisory committee to assist in the implementation and periodic evaluation of VPMS.

(2) The department shall consult with the committee concerning any potential operational or economic impacts on dispensers and health care providers related to transmission system equipment and software requirements.

(3) The committee shall develop guidelines for use of VPMS by dispensers and health care providers and shall make recommendations concerning under what circumstances, if any, the department shall or may give VPMS data, including data thresholds for such disclosures, to law enforcement personnel. The committee shall also review and approve advisory notices prior to publication.

(b) The advisory committee shall be chaired by the commissioner or his or her designee and shall include the following members:

(1) the deputy commissioner for alcohol and drug abuse programs;

(2) a representative from the Vermont medical society;

(3) a representative from the American college of emergency
physicians–Vermont chapter;

(4) a representative from the Vermont state nurses association;

(5) a representative from the Vermont board of medical practice;

(6) a representative from the Vermont board of pharmacy;

(7) a pharmacist from the Vermont pharmacists association;

(8) a representative of the Vermont state dental society;

(9) the commissioner of public safety;

(10) a representative of the Vermont attorney general;

(11) a representative of the Vermont substance abuse treatment
providers association;

(12) a mental health provider or a certified alcohol and drug counselor;

(13) a consumer in recovery from prescription abuse;

(14) a consumer receiving medical treatment for chronic pain; and

(15) any other member invited by the commissioner.

(c) The committee shall meet no less than quarterly in the first year, and no
less than annually each following year, but may be convened at any time by the
commissioner or the commissioner’s designee.

(d) The committee shall issue a report to the senate and house committees
on judiciary, the senate committee on health and welfare, and the house

committee on human services no later than January 15th in 2008, 2010, and 2012.

(e) This section shall sunset July 1, 2012 and thereafter the committee shall cease to exist.

§ 4287. RULEMAKING

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

Sec. 2. 18 V.S.A. § 4218 is amended to read:

§ 4218. ENFORCEMENT

(a) It is hereby made the duty of the department of public safety, its officers, agents, inspectors, and representatives, and pursuant to its specific authorization any other peace officer within the state, and of all state's attorneys, to enforce all provisions of this chapter and of the rules and regulations of the board of health adopted under this chapter, except those otherwise specifically delegated, and to cooperate with all agencies charged with the enforcement of the federal drug laws, this chapter, and the laws of other states relating to regulated drugs.

(b) Such authorities and their specifically authorized agents shall have, at all times, access to all orders, prescriptions, and records kept or maintained under this chapter, as provided herein.

(c) A person who gives information to law enforcement officers, the drug rehabilitation commission, or professional boards as defined in section 4201 of this title and their specifically authorized agents, concerning the use of regulated drugs or the misuse by other persons of regulated drugs, shall not be subject to any civil, criminal, or administrative liability or penalty for giving such information.

(d) Nothing in this section shall authorize the department of public safety and other authorities described in subsection (a) of this section to have access to VPMS created pursuant to chapter 84A of this title, except as provided in that chapter.

Sec. 3. REPORT

The commissioner of health, the commissioner of public safety, the executive director of states attorneys and sheriffs, the defender general, and the executive director of the Vermont chapter of the American civil liberties union shall report to the senate and house committees on judiciary, senate committee on health and welfare and the house committee on human services no later than December 15, 2006 regarding revisions to 18 V.S.A. § 4218 which will address medical record privacy concerns that may be raised by permitting law enforcement unfettered access to pharmacy records.

Approved: May 31, 2006