

South Carolina General Assembly
122nd Session, 2017-2018

A91, R113, H3824

STATUS INFORMATION

General Bill

Sponsors: 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

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Introduced in the House on February 22, 2017

Introduced in the Senate on April 5, 2017

Last Amended on May 9, 2017

Passed by the General Assembly on May 10, 2017

Governor's Action: May 19, 2017, Signed

Summary: Prescription drug monitoring program

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/22/2017	House	Introduced and read first time (House Journal-page 40)
2/22/2017	House	Referred to Committee on Medical, Military, Public and Municipal Affairs (House Journal-page 40)
2/28/2017	House	Member(s) request name added as sponsor: Allison, Arrington, Forrester, Tallon, Hamilton, Felder, Elliott
3/7/2017	House	Member(s) request name added as sponsor: Jordan, B.Newton, Martin, Erickson, Jefferson, Cobb-Hunter, Govan, Long
3/8/2017	House	Member(s) request name added as sponsor: Putnam, Cogswell, Collins
3/29/2017	House	Committee report: Favorable with amendment Medical, Military, Public and Municipal Affairs (House Journal-page 47)
3/30/2017		Scrivener's error corrected
4/4/2017	House	Amended (House Journal-page 74)
4/4/2017	House	Read second time (House Journal-page 74)
4/4/2017	House	Roll call Yeas-97 Nays-0 (House Journal-page 76)
4/5/2017	House	Read third time and sent to Senate (House Journal-page 8)
4/5/2017	Senate	Introduced and read first time (Senate Journal-page 10)
4/5/2017	Senate	Referred to Committee on Medical Affairs (Senate Journal-page 10)
4/25/2017	Senate	Committee report: Favorable with amendment Medical Affairs (Senate Journal-page 17)
5/3/2017	Senate	Committee Amendment Adopted (Senate Journal-page 49)
5/3/2017	Senate	Amended (Senate Journal-page 49)
5/4/2017	Senate	Amended (Senate Journal-page 45)
5/5/2017		Scrivener's error corrected
5/9/2017	Senate	Amended (Senate Journal-page 20)
5/9/2017	Senate	Read second time (Senate Journal-page 20)
5/9/2017	Senate	Roll call Ayes-34 Nays-5 (Senate Journal-page 20)
5/10/2017		Scrivener's error corrected
5/10/2017	Senate	Read third time and returned to House with amendments (Senate Journal-page 38)
5/10/2017	House	Concurred in Senate amendment and enrolled (House Journal-page 92)

5/10/2017	House	Roll call Yeas-100 Nays-0 (House Journal-page 93)
5/15/2017		Ratified R 113
5/19/2017		Signed By Governor
5/30/2017		Effective date 05/19/17
5/31/2017		Act No. 91

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VERSIONS OF THIS BILL

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(A91, R113, H3824)

AN ACT 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 MONITORING PROGRAM, BEFORE PRESCRIBING A SCHEDULE II CONTROLLED SUBSTANCE, WITH EXCEPTIONS; TO AMEND SECTION 44-53-1630, AS AMENDED, RELATING TO THE PRESCRIPTION MONITORING PROGRAM, SO AS TO ADD A DEFINITION OF "PRACTITIONER"; TO AMEND SECTION 44-53-1640, AS AMENDED, RELATING TO THE PRESCRIPTION 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 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 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; TO AMEND SECTION 40-43-130, RELATING IN PART TO CONTINUING EDUCATION REQUIREMENTS FOR PHARMACISTS, SO AS TO ADD REQUIREMENTS ADDRESSING CERTAIN CONTROLLED SUBSTANCES; TO AMEND SECTION 40-43-82, RELATING TO AUTHORIZED ACTIONS OF A CERTIFIED PHARMACY TECHNICIAN, SO AS TO PROHIBIT CERTAIN ACTIONS INVOLVING THE FILLING, REFILLING, OR REPACKAGING OF MEDICATIONS; TO AMEND SECTION 40-43-86, AS AMENDED, RELATING IN PART TO THE REQUIREMENT

FOR A PHARMACIST-IN-CHARGE TO DEVELOP CERTAIN PHARMACY POLICIES, SO AS TO PROHIBIT PHARMACISTS FROM SUPERVISING MORE THAN FOUR PHARMACY TECHNICIANS; TO AMEND SECTION 40-43-130, RELATING TO CONTINUING EDUCATION REQUIREMENTS PROVIDED IN THE SOUTH CAROLINA PHARMACY PRACTICE ACT, SO AS TO INCLUDE EXEMPTIONS FOR PHARMACY TECHNICIANS; BY ADDING SECTION 40-43-75 SO AS TO AUTHORIZE A RENAL DIALYSIS FACILITY TO DELIVER LEGEND DRUGS OR DEVICES TO PATIENTS IN CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 40-43-86, AS AMENDED, RELATING IN PART TO THE AUTHORITY OF A PHARMACIST TO REFILL A PRESCRIPTION WITHOUT THE AUTHORIZATION OF THE PRESCRIBER, SO AS TO PROVIDE FOR EMERGENCY REFILLS.

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

Prescription monitoring program, requirement to review of patient's prescription history

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 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;

(4) a practitioner approving the administration of a Schedule II controlled substance by a health care provider licensed in South Carolina;

(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 and the patient's medications are stored, given, 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."

Prescription monitoring program, definitions

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 article:

(1) '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.

(2) '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.

(3) '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.

(4) 'Drug control' means the Department of Health and Environmental Control, Bureau of Drug Control.

(5) '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.

(6) 'Practitioner' means an individual authorized pursuant to state and federal law to prescribe controlled substances."

Prescription monitoring program, establishment

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 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."

Prescription monitoring program, penalties for failure to review a patient's controlled substance prescription history

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 who knowingly discloses 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 who knowingly uses 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 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.”

Continuing education for dentists on the prescription of Schedule II, III, and IV controlled substances

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

“Section 40-15-145. As part of the biennial 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.”

Continuing education for optometrists on the prescription of Schedule II, III, and IV controlled substances

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.”

Continuing education for physician assistants on the prescription of Schedule II, III, and IV controlled substances

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 hours 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;”

Continuing education for podiatrists on the prescription of Schedule II, III, and IV controlled substances

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 a biennial renewal license fee which must be established in regulation by the board, biennially must complete twenty-four 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 biennial 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. 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. If

the renewal fee is not paid within two months after the date of notification by the department 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.”

Continuing education for pharmacists, prescription of Schedule II, III, and IV controlled substances

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 and at least one hour must be related to approved procedures for 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.”

Pharmacy technicians, authorized actions and continuing education requirements

SECTION 10. A. Section 40-43-82(C) of the 1976 Code is amended to read:

“(C)(1) Notwithstanding any other provision of this chapter, a supervising pharmacist may authorize a certified pharmacy technician to perform any of the following actions including, but not limited to:

- (a) receiving and initiating verbal telephone orders;
- (b) conducting one-time prescription transfers;
- (c) checking a technician’s refill of medications if the medication is to be administered by a licensed health care professional in an institutional setting; and
- (d) checking a technician’s repackaging of medications from bulk to unit dose in an institutional setting.

(2) Nothing in this section prevents the Board of Pharmacy from establishing duties for a certified technician; provided, however, that a certified technician is prohibited from checking another technician's fill, refill, or repackaging of medications for delivery to a patient in an outpatient setting."

B. Section 40-43-82 is amended by adding an appropriately lettered new subsection to read:

"() Pharmacy technicians are exempt from continuing education requirements for the first renewal period following initial registration."

Pharmacists-in-charge, supervision of pharmacy technicians

SECTION 11. Section 40-43-86(B)(4)(b) of the 1976 Code, as last amended by Act 11 of 2017, is further amended to read:

"(b) The pharmacist-in-charge shall develop and implement written policies and procedures to specify the duties to be performed by pharmacy technicians. The duties and responsibilities of these personnel shall be consistent with their training and experience. These policies and procedures shall, at a minimum, specify that pharmacy technicians are to be personally supervised by a licensed pharmacist who has the ability to control and who is responsible for the activities of pharmacy technicians and that pharmacy technicians are not assigned duties that may be performed only by a licensed pharmacist. One pharmacist may not supervise more than a total of four pharmacy technicians at a time, including both state-certified and nonstate-certified technicians. One pharmacist may not supervise more than two nonstate certified technicians at a time. If a pharmacist supervises only one or two pharmacy technicians, these technicians are not required to be state-certified. Pharmacy technicians do not include personnel in the prescription area performing only clerical functions, including data entry up to the point of dispensing, as defined in Section 40-43-30(15)."

Continuing education for pharmacy technicians, exemptions

SECTION 12. Section 40-43-130(G) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"() Pharmacy technicians are exempt from continuing education requirements while enrolled in a pharmacy technician program, as well

as during the first renewal period following successful completion of the program.”

Renal dialysis facilities, authority to deliver a legend drug or device to a patient

SECTION 13. Chapter 43, Title 40 of the 1976 Code is amended by adding:

“Section 40-43-75. (A) For purposes of this section:

(1) ‘Renal dialysis facility’ or ‘RDF’ means an outpatient facility that treats and offers staff-assisted dialysis or training and support services for self-dialysis patients to end-stage renal disease patients, as defined by Centers for Medicare and Medicaid Services. An RDF may be composed of one or more fixed buildings, mobile units, or a combination of them, as defined in R. 61-97. An RDF must be certified by Medicare to provide dialysis-related services to ESRD patients and must have a medical director licensed as a physician, pursuant to Chapter 47, Title 40, on staff.

(2) ‘End-stage renal disease’ or ‘ESRD’ means the disease state, and associated conditions, defined under 42 C.F.R. 406.13 and the United States Social Security Act.

(B) An RDF may deliver a legend drug or device to a patient of an RDF if:

(1) the drug or device is for home use by the patient or for administration in the facility as required by the prescriber’s order or prescription;

(2) the drug or device is dispensed to the RDF by a properly licensed resident or nonresident pharmacy licensed by the board or administered by a properly licensed health care practitioner;

(3) the drug or device is dispensed by the pharmacy pursuant to a valid prescription issued by a licensed practitioner, as defined in Section 40-43-30(45);

(4) the drug or device delivered by the RDF is properly labeled in accordance with state and federal law;

(5) the drug or device is held by the RDF in a secure location in an area not accessible to the public, and packages containing drugs or devices are delivered by RDF staff, unopened, to the patient;

(6) the patient is given a choice of receiving the drug or device from the RDF, at their home, or from another agent;

(7) the drugs exclude controlled substances; and

(8) the RDF maintains policies and procedures concerning how it will receive, store, maintain, and return any drugs or devices that are not picked up by the patient and returned to the dispensing pharmacy.

(C) The provisions of this section do not waive any other requirements to obtain licensure, permits, or certification as required by law to possess legend drug products. A facility engaged in an activity related to the delivery or distribution of legend drugs still shall hold the requisite licensure or drug permits required by law.”

Pharmacist authority to dispense an emergency refill

SECTION 14. Section 40-43-86(P) of the 1976 Code is amended to read:

“(P) If a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain refill authorization from the prescriber, the pharmacist may dispense, once within a twelve-month period, an emergency refill of up to a ten-day supply of the prescribed medication if:

- (1) the prescription is not for a controlled substance;
- (2) the medication is essential to the maintenance of life or to the continuation of therapy;
- (3) in the pharmacist’s professional judgment, continuing the therapy for up to ten days will produce no undesirable health consequences or cause physical or mental discomfort;
- (4) the pharmacist properly records the dispensing; and
- (5) the dispensing pharmacist notifies the prescriber of the refill and the amount of the refill, not to exceed a ten-day supply, within a reasonable time, but no later than ten days after the once in twelve months refill dispensing.”

Severability clause

SECTION 15. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 16. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2017.

Approved the 19th day of May, 2017.
