

Senate Bill 179

By: Senators Thomas of the 54th, Unterman of the 45th, Mullis of the 53rd, Smith of the 52nd, Balfour of the 9th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To enact the "Patient Safe Prescription Drug Act"; to amend Chapter 4 of Title 26 of the
 2 Official Code of Georgia Annotated, relating to pharmacists and pharmacies, so as to provide
 3 for electronic data prescription drug orders; to define certain terms; to require electronic data
 4 prescription drug orders to meet certain requirements; to prohibit access to electronic data
 5 prescription drug orders from the time of transmission until receipt by the designated
 6 pharmacy; to prohibit certain restrictions of practitioners; to prohibit the restriction of a
 7 patient's choice of retail pharmacy; to provide for an exemption for institutions using
 8 electronic medical record systems; to change certain provisions relating to substitution of
 9 generic drugs for name brand drugs; to provide that incentives may be offered to pharmacies,
 10 pharmacists, and practitioners that accept or utilize electronic data prescription drug orders;
 11 to provide for related matters; to repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 This Act shall be known and may be cited as the "Patient Safe Prescription Drug Act."

15 **SECTION 2.**

16 Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and
 17 pharmacies, is amended by adding to Code Section 26-4-5, relating to definitions, new
 18 paragraphs (14.1) through (14.5), (18.05), and (38.5) to read as follows:

19 "(14.1) 'Electronic data prescription drug order' means any digitalized prescription drug
 20 order transmitted to a pharmacy, other than by facsimile, which contains the secure,
 21 personalized digital key, code, number, or other identifier used to identify and
 22 authenticate the prescribing practitioner in a manner required by state laws and board
 23 regulations and includes all other information required by state laws and board
 24 regulations.

25 (14.2) 'Electronic data signature' means:

1 (A) A secure, personalized digital key, code, number, or other identifier used for secure
 2 electronic data transmissions which identifies and authenticates the prescribing
 3 practitioner as a part of an electronic data prescription drug order transmitted to a
 4 pharmacy; or

5 (B) An electronic symbol or process attached to or logically associated with a record
 6 and executed or adopted by a prescribing practitioner with the intent to sign an
 7 electronic data prescription drug order, which identifies the prescribing practitioner, as
 8 a part of an electronic data prescription drug order transmitted to a pharmacy.

9 (14.3) 'Electronic signature' means an electronic visual image signature or an electronic
 10 data signature of a practitioner which appears on an electronic prescription drug order.

11 (14.4) 'Electronic visual image prescription drug order' means any exact visual image of
 12 a prescription drug order issued by a practitioner electronically and which bears an
 13 electronic reproduction of the visual image of the practitioner's signature, is either printed
 14 on security paper and presented as a hard copy to the patient or transmitted by the
 15 practitioner via facsimile machine or equipment to a pharmacy, and contains all
 16 information required by state law and regulations of the board.

17 (14.5) 'Electronic visual image signature' means any exact visual image of a
 18 practitioner's signature reproduced electronically on a hard copy prescription drug order
 19 presented to the patient by the practitioner or is a prescription drug order transmitted to
 20 a pharmacy by a practitioner via facsimile machine or equipment."

21 "(18.05) 'Hard copy prescription drug order' means a written, typed, reproduced, or
 22 printed prescription drug order prepared on a piece of paper."

23 "(38.5) 'Security paper' means paper utilizing security features on which the electronic
 24 visual image prescription drug order of a practitioner is printed and presented to a patient
 25 so as to ensure that the prescription drug order is not subject to any form of copying,
 26 reproduction, or alteration, or any combination of copying, reproduction, or alteration,
 27 and may include a watermark produced by the electronic digital process when a
 28 prescription is printed to clearly show if a prescription has been reproduced or copied in
 29 an unauthorized manner."

30 SECTION 3.

31 Said chapter is further amended by striking paragraph (36) of Code Section 26-4-5, relating
 32 to definitions, and inserting in its place the following:

33 "(36) 'Prescription drug order' means a lawful order of a practitioner for a drug or device
 34 for a specific patient; such order includes an electronic visual image prescription drug
 35 order and an electronic data prescription drug order."

1 (4) The pharmacist shall exercise professional judgment regarding the accuracy and
 2 authenticity of ~~the~~ any electronically transmitted, issued, or produced prescription drug
 3 order consistent with federal and state laws and rules and regulations adopted pursuant
 4 to the same;

5 (5) An electronically ~~transmitted~~ encrypted, issued, or produced prescription drug order
 6 transmitted from a prescriber practitioner to a pharmacist shall be considered a highly
 7 confidential transaction and the said transmission, issuance, or production shall not be
 8 compromised by interventions, control, change, altering, ~~or~~ manipulation, or accessing
 9 patient record information by any other person or party in any manner whatsoever
 10 between the time after the practitioner has electronically transmitted, issued, or produced
 11 a prescription drug order and such order has been received by the pharmacy of the
 12 patient's choice;

13 (6) Any pharmacist that transmits, receives, or maintains any prescription or prescription
 14 refill either orally, in writing, or electronically shall ensure the security, integrity, and
 15 confidentiality of the prescription and any information contained therein; and

16 (7) The board shall promulgate rules and regulations which may provide specific
 17 exceptions under this Code section for institutional settings such as hospital pharmacies,
 18 nursing home pharmacies, clinic pharmacies, or pharmacies owned or operated directly
 19 by health maintenance organizations."

20 "(i) ~~A written~~ All prescription drug ~~order~~ orders must bear ~~an original~~ the signature of the
 21 prescribing practitioner as defined in Code Section 16-13-21. Physician's assistants must
 22 comply with all applicable laws regarding signatures. Further, the nature of such signature
 23 must meet the requirements set forth in regulations promulgated by the board. A physically
 24 applied signature stamp ~~or other signature facsimile~~ is not acceptable in lieu of an original
 25 signature. ~~When~~ Except as otherwise provided for in this subsection, when an oral
 26 prescription drug order or the oral authorization for the refilling of a prescription drug order
 27 is received which ~~is~~ has been transmitted by someone other than the practitioner, the name
 28 of the individual making the transmission and the date, time, and location of the origin of
 29 the transmission must be recorded on the original prescription drug order or other ~~uniform~~
 30 record by the pharmacist receiving the transmission. No one other than the practitioner or
 31 an agent authorized by the practitioner shall transmit such prescriptions in any manner. In
 32 institutional settings such as hospital pharmacies, nursing home pharmacies, clinic
 33 pharmacies, or pharmacies owned or operated directly by health maintenance
 34 organizations, the name of the individual making the transmission is not required to be
 35 placed on the order."

36 "(l) A Schedule II controlled substance prescription drug order in written form signed in
 37 indelible ink by the practitioner may be accepted by a pharmacist and the Schedule II

1 controlled substance may be dispensed by such pharmacist. Other forms of Schedule II
 2 controlled substance prescription forms drug orders may be accepted by a pharmacist and
 3 the Schedule II controlled substance may be dispensed by such pharmacist in accordance
 4 with regulations promulgated by the board and in accordance with DEA regulations found
 5 in 21 C.F.R. 1306."

6 SECTION 5.

7 Said chapter is further amended by adding at the end of Code Section 26-4-80, relating to
 8 dispensing, electronically transmitted drug orders, refills, and Schedule II controlled
 9 substance prescriptions, new subsections (m), (n), and (o) to read as follows:

10 "(m) No licensee nor any other entity shall be permitted to provide facsimile machines or
 11 equipment, computer software, technology, hardware, or supplies related to the electronic
 12 transmission of prescription drug orders to any practitioner which restricts such practitioner
 13 from issuing prescription drug orders for certain prescription drugs or restricts a patient
 14 from choosing the retail pharmacy to which an electronic prescription drug order may be
 15 transmitted.

16 (n) Institutions including, but not limited to, hospitals, long-term care facilities, and
 17 inpatient hospice facilities which utilize electronic medical record systems that meet the
 18 information requirements for prescription drug orders for patients pursuant to this Code
 19 section shall be considered to be in compliance with this Code section.

20 (o) Nothing in this Code section shall be construed to prohibit any insurance company,
 21 hospital or medical service plan, health care provider network, health maintenance
 22 organization, health care plan, employer, or other similar entity providing health insurance
 23 from offering incentives to pharmacies, pharmacists, and practitioners that accept or utilize
 24 electronic data prescription drug orders."

25 SECTION 6.

26 Said chapter is further amended by striking subsection (g) of Code Section 26-4-81, relating
 27 to substitution of generic drugs for name brand drugs, and inserting in its place the following:

28 "(g) A practitioner of the healing arts may instruct the pharmacist not to substitute a
 29 generic name drug in lieu of a brand name drug by including the words 'brand necessary'
 30 in the body of the prescription. When a prescription is a hard copy prescription drug order,
 31 such ~~Such~~ indication of brand necessary must be in the practitioner's own handwriting and
 32 shall not be printed, applied by rubber stamp, or any such similar means."

33 SECTION 7.

34 All laws and parts of laws in conflict with this Act are repealed.