

Senate Bill 248

By: Senators Shafer of the 48th, Chance of the 16th and Douglas of the 17th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
2 controlled substances, so as to enact the "Georgia Prescription Monitoring Program Act"; to
3 provide for legislative intent; to provide for definitions; to provide for the establishment of
4 a program for the monitoring of prescribing and dispensing Schedule II, III, IV, or V
5 controlled substances by the Georgia State Board of Pharmacy; to require dispensers to
6 submit certain information regarding the dispensing of certain drugs; to provide for the
7 confidentiality of submitted information except under certain circumstances; to authorize the
8 Georgia Drugs and Narcotics Agency to contract for services relating to the program; to
9 provide for notice and information to prescribers and dispensers; to provide for the
10 establishment of a Prescription Monitoring Program Advisory Committee; to provide for its
11 membership, duties, and organization; to provide for the establishment of rules and
12 regulations; to provide for penalties; to provide for limited liability; to provide for related
13 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled
17 substances, is amended by adding a new article to read as follows:

18 "ARTICLE 6

19 16-13-120.

20 This article shall be known and may be cited as the 'Georgia Prescription Monitoring
21 Program Act.'

22 16-13-121.

23 This article is intended to improve the state's ability to identify and stop diversion of
24 prescription drugs in an efficient and cost-effective manner that will not impede the
25 appropriate medical utilization of licit controlled substances or other licit drugs with
26 potential for abuse while minimizing impact on pharmacy operations.

27 16-13-122.

28 As used in this article, the term:

29 (1) 'Agency' means the Georgia Drugs and Narcotics Agency.

30 (2) 'Board' means the Georgia State Board of Pharmacy.

31 (3) 'Controlled substance' has the same meaning given such term in paragraph (4) of
32 Code Section 16-13-21.

33 (4) 'Dispenser' means a person that delivers a Schedule II, III, IV, or V controlled
34 substance to the ultimate user but shall not include:

35 (A) A licensed pharmacy of a hospital that dispenses such substances for the purpose
36 of inpatient or outpatient hospital care, a licensed pharmacy of a hospital or retail
37 pharmacy of a hospital that dispenses prescriptions for controlled substances at the time
38 of dismissal or discharge from such a facility, or a licensed pharmacy of a hospital or
39 retail pharmacy of a hospital that dispenses such substances for long-term care patients
40 or inpatient hospice facilities;

41 (B) An institutional pharmacy that serves only a health care facility, including, but not
42 limited to, a nursing home, an intermediate care home, a personal care home, or a
43 hospice program, which provides inpatient care and which pharmacy dispenses such
44 substances to be administered and used by a patient on the premises of the facility;

45 (C) A practitioner or other authorized person who administers such a substance; or

46 (D) A pharmacy operated by, on behalf of, or under contract with the Department of
47 Corrections for the sole and exclusive purpose of providing services in a secure
48 environment to prisoners within a penal institution, penitentiary, prison, detention
49 center, or other secure correctional institution. This shall include correctional
50 institutions operated by private entities in this state which house inmates under the
51 Department of Corrections.

52 A hospital, clinic, or other health care facility may apply to the board for an exemption
53 to be excluded from the definition of this term for purposes of compliance with this
54 article if compliance would impose an undue hardship on such facility. The board shall
55 provide guidelines and criteria for what constitutes an undue hardship which shall include
56 criteria relating to the amount of indigent patients served and the lack of electronic
57 capability of the facility.

58 (5) 'Patient' means the person or animal who is the ultimate user of a drug for whom a
59 prescription is issued or for whom a drug is dispensed.

60 (6) 'Prescriber' means a physician, dentist, veterinarian, scientific investigator, or other
61 person licensed, registered, or otherwise authorized under the laws of this state to
62 prescribe, distribute, dispense, conduct research with respect to, or administer a
63 controlled substance in the course of professional practice or research in this state.

64 (7) 'Schedule II, III, IV, or V controlled substance' means a controlled substance that is
65 classified as a Schedule II, III, IV, or V controlled substance under Code Section
66 16-13-26, 16-13-27, 16-13-28, or 16-13-29, respectively, or under the Federal Controlled
67 Substances Act, 21 U.S.C. Section 812.

68 16-13-123.

69 (a) The board and agency may apply for available grants and accept any gifts, grants, or
70 donations to assist in developing and maintaining the program established by this article.

71 (b) The board shall be authorized to grant funds to dispensers for the purpose of covering
72 costs for dedicated equipment and software for dispensers to use in complying with the
73 reporting requirements of this article. Such grants shall be funded by gifts, grants,
74 donations, or other funds appropriated for the operation of the prescription monitoring
75 program established under the provisions of Code Section 16-13-124. The board shall be
76 authorized to establish standards and specifications for any equipment and software
77 purchased pursuant to a grant received pursuant to this article. Nothing in this article shall
78 be construed to require a dispenser to incur costs to purchase equipment and software to
79 comply with this article.

80 16-13-124.

81 (a) The board shall establish and maintain a program for the monitoring of prescribing and
82 dispensing of all Schedule II, III, IV, or V controlled substances.

83 (b) Each dispenser shall submit to the board by electronic means information regarding
84 each prescription dispensed for a Schedule II, III, IV, or V controlled substance. The
85 information submitted for each prescription shall include, but not be limited to:

86 (1) United States Drug Enforcement Administration (DEA) permit number or approved
87 dispenser facility identification number;

88 (2) Date prescription filled;

89 (3) Prescription number;

90 (4) Whether prescription is new or a refill;

91 (5) National Drug Code (NDC) for drug dispensed;

92 (6) Quantity dispensed;

- 93 (7) Number of days' supply of the drug;
94 (8) Patient's name;
95 (9) Patient's address;
96 (10) Patient's date of birth;
97 (11) Approved prescriber identification number;
98 (12) Date prescription issued by prescriber; and
99 (13) Other data elements consistent with standards established by the American Society
100 for Automation in Pharmacy, if designated by regulations of the board.
101 (c) Each dispenser shall submit the information in accordance with transmission methods
102 and frequency requirements established by the board but no less often than weekly and
103 shall report, at a minimum, prescriptions dispensed up to the day prior to data submission.
104 (d) The board may issue a waiver to a dispenser that is unable to submit prescription
105 information by electronic means acceptable to the board. Such waiver may permit the
106 dispenser to submit prescription information by paper form or other means, provided all
107 information required in subsection (b) of this Code section is submitted in this alternative
108 format subject to the frequency requirements of subsection (c) of this Code section.
109 Requests for waivers shall be submitted in writing.
- 110 16-13-125.
111 (a) Prescription information submitted to the board shall be confidential and shall not be
112 subject to open records requirements, as contained in Article 4 of Chapter 18 of Title 50,
113 except as provided in subsections (c) and (d) of this Code section.
114 (b) The board shall establish and maintain strict procedures to ensure that the privacy and
115 confidentiality of patients and prescribers and patient and prescriber information collected,
116 recorded, transmitted, and maintained pursuant to this article are protected. Such
117 information shall not be disclosed to persons except as otherwise provided in this article
118 and only in a manner which in no way would conflict with the requirements of the federal
119 Health Insurance Portability and Accountability Act of 1996, P.L. 104-191. This may
120 include, but not be limited to, restricting access only to those individuals and entities which
121 clearly demonstrate a need to know such information.
122 (c) The board shall review the prescription information and if there is reasonable cause to
123 believe a violation of law or breach of professional standards may have occurred, the board
124 shall notify the appropriate law enforcement or professional licensing, certification, or
125 regulatory agency or entity and shall provide prescription information to such agency or
126 entity which may be necessary for an investigation.
127 (d) The board shall be authorized to provide data collected pursuant to this article to the
128 following persons or under the following circumstances:

- 129 (1) Persons authorized to prescribe or dispense controlled substances for the purpose of
130 providing medical or pharmaceutical care for their patients;
131 (2) Upon the request of a person about whom the information requested concerns or
132 upon the request on his or her behalf by his or her attorney;
133 (3) The Composite State Board of Medical Examiners or any licensing board whose
134 practitioners have the authority to prescribe or dispense controlled substances;
135 (4) Local, state, and federal law enforcement, regulatory, or prosecutorial officials
136 engaged in the administration, investigation, or enforcement of the laws governing licit
137 drugs and who are involved in a bona fide, specific drug related investigation involving
138 a designated case;
139 (5) Upon the lawful order of a court of competent jurisdiction; and
140 (6) Personnel of the agency for purposes of administration and enforcement of this
141 article, Article 2 of this chapter, the 'Georgia Controlled Substances Act,' or any other
142 applicable state law.
- 143 (e) The board may provide data to public or private entities for statistical, research, or
144 educational purposes after removing information that could be used to identify prescribers
145 or individual patients or persons who received prescriptions from dispensers.
146 (f) The board may provide data to a prescription monitoring program of another state if the
147 confidentiality, security, and privacy standards of the requesting state are determined by
148 the board to be equivalent to those of the board.
149 (g) Any person who receives data or reports relating to this article from the board shall not
150 provide such data or reports to any other person except by order of a court of competent
151 jurisdiction or as otherwise permitted pursuant to this article.

152 16-13-126.

153 The agency shall be authorized to contract with another state agency or with a private
154 vendor, as necessary, to ensure the effective operation of the prescription monitoring
155 program established pursuant to this article. Any contractor shall be bound to comply with
156 the provisions regarding confidentiality of prescription information in Code Section
157 16-13-125 and shall be subject to the penalties specified in Code Section 16-13-130 for
158 unlawful acts.

159 16-13-127.

160 The board shall provide notice and information to all prescribers and dispensers in this state
161 as to the intent of this article, the program established pursuant to this article, and
162 instructions on how to submit prescription information to the board via electronic means.

163 16-13-128.

164 (a) There is established a Prescription Monitoring Program Advisory Committee for the
165 purposes of consulting with and advising the board and the agency on matters related to the
166 establishment, maintenance, and operation of the prescription monitoring program
167 established pursuant to this article. This shall include, but not be limited to, data collection,
168 regulation of access to data, evaluation of data to identify benefits and outcomes of the
169 program, communication to prescribers and dispensers as to the intent of the program and
170 how to use the data base, and security of data collected.

171 (b) The advisory committee shall consist of five members, appointed by the board, which
172 may include individuals representing pharmacies, dentistry, and medical professionals.
173 The board shall be authorized, but not required, to make such appointments from
174 recommendations submitted by the Medical Association of Georgia, the Georgia Dental
175 Association, the Georgia Pharmacy Association, and the Georgia Society of Health System
176 Pharmacies. Each member of the advisory committee shall serve a two-year term and until
177 the appointment and qualification of such member's successor.

178 (c) The advisory committee shall elect a chairperson and vice chairperson from among its
179 membership to serve a term of one year.

180 (d) The advisory committee shall meet at the call of the chairperson or upon request by at
181 least three of the members and shall meet at least one time per year. Three members of the
182 committee shall constitute a quorum.

183 (e) The members shall receive no compensation or reimbursement of expenses from the
184 state for their services as members of the advisory committee.

185 16-13-129.

186 The board shall promulgate rules and regulations setting forth the procedures and methods
187 for implementing this article.

188 16-13-130.

189 (a) A dispenser who willfully and intentionally fails to submit prescription monitoring
190 information to the board as required by this article or willfully and intentionally submits
191 incorrect prescription information shall be guilty of a misdemeanor and punished by
192 imprisonment for a period not to exceed 12 months or a fine not to exceed \$1,000.00, or
193 both.

194 (b) An individual authorized to have prescription monitoring information pursuant to this
195 article who willfully and intentionally discloses such information in violation of this article
196 shall be guilty of a felony and punished by imprisonment for a period not to exceed ten
197 years or a fine not to exceed \$10,000.00, or both.

198 (c) An individual authorized to have prescription monitoring information pursuant to this
199 article who willfully and intentionally uses such information in a manner or for a purpose
200 in violation of this article shall be guilty of a felony and punished by imprisonment for a
201 period not to exceed ten years or a fine not to exceed \$10,000.00, or both.

202 (d) The penalties provided by this Code section are intended to be cumulative of other
203 penalties which may be applicable and are not intended to repeal such other penalties.

204 16-13-131.

205 Nothing in this article shall require a dispenser or prescriber to obtain information about
206 a patient from the prescription monitoring program established pursuant to this article. A
207 dispenser or prescriber shall not have a duty and shall not be held liable for damages to any
208 person in any civil, criminal, or administrative action for injury, death, or loss to person or
209 property on the basis that the dispenser or prescriber did or did not seek or obtain
210 information from the prescription monitoring program. A dispenser or prescriber acting
211 in good faith shall be immune from any civil, criminal, or administrative liability that might
212 otherwise be incurred or imposed for requesting or receiving information from the
213 prescription monitoring program."

214 **SECTION 2.**

215 This Act shall become effective on July 1, 2009.

216 **SECTION 3.**

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