

House Bill 249

By: Representatives Tanner of the 9th, Newton of the 123rd, Burns of the 159th, Jones of the 47th, Welch of the 110th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 13 of Title 16 and Article 2 of Chapter 16 of Title 45 of the Official Code
2 of Georgia Annotated, relating to controlled substances and death investigations,
3 respectively, so as to collect more information regarding the dispensing and use of certain
4 controlled substances; to change the frequency of reporting certain prescriptions in the
5 electronic data base of prescription information; to clarify provisions relating to
6 confidentiality; to change provisions relating to liability and duties; to change provisions
7 relating to the definitions of dangerous drugs; to provide for a coroner's inquest when an
8 individual dies of a suspected drug overdose; to provide for related matters; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled
13 substances, is amended by revising subsection (b) of Code Section 16-13-59, relating to
14 information to include for each Schedule II, III, IV, or V controlled substance prescription
15 and compliance, as follows:

16 "(b) Each dispenser shall submit the prescription information required in subsection (a) of
17 this Code section in accordance with transmission methods ~~and frequency requirements~~
18 established by the agency ~~on at least a weekly basis~~ every 24 hours and shall report, at a
19 minimum, such prescription information no later than ten days after the prescription is
20 dispensed. If a dispenser is temporarily unable to comply with this subsection due to an
21 equipment failure or other circumstances, such dispenser shall immediately notify the
22 board and agency."

SECTION 2.

23
24 Said chapter is further amended in Code Section 16-13-60, relating to privacy and
25 confidentiality, use of data, and security programs, by revising subsections (a), (c), and (c.1)
26 as follows:

27 "(a) Except as otherwise provided in subsections (c), ~~(c.1)~~, and (d) of this Code section,
28 prescription information submitted pursuant to Code Section 16-13-59 shall be confidential
29 and shall not be subject to open records requirements, as contained in Article 4 of Chapter
30 18 of Title 50."

31 "(c) The agency shall be authorized to provide requested prescription information collected
32 pursuant to this part only as follows:

33 (1) To persons authorized to prescribe or dispense controlled substances for the sole
34 purpose of providing medical or pharmaceutical care to a specific patient ~~or to delegates~~
35 ~~of such persons authorized to prescribe or dispense controlled substances in accordance~~
36 ~~with the following:~~

37 ~~(A) Such delegates are members of the prescriber or dispenser's staff and retrieve and~~
38 ~~review information and reports strictly for purposes of determining misuse, abuse, or~~
39 ~~underutilization of prescribed medication;~~

40 ~~(B) Such delegates are licensed, registered, or certified by the state regulatory board~~
41 ~~governing the delegating prescriber or dispenser, and the delegating prescriber or~~
42 ~~dispenser shall be held responsible for the use of the information and data by their~~
43 ~~delegates, and~~

44 ~~(C) All information and reports retrieved and reviewed by delegates shall be~~
45 ~~maintained in a secure and confidential manner in accordance with the requirements of~~
46 ~~subsection (f) of this Code section;~~

47 (2) Upon the request of a patient, prescriber, or dispenser about whom the prescription
48 information requested concerns or upon the request on his or her behalf of his or her
49 attorney;

50 (3) To local or state law enforcement or prosecutorial officials pursuant to the issuance
51 of a search warrant from an appropriate court or official in the county in which the office
52 of such law enforcement or prosecutorial officials are located pursuant to Article 2 of
53 Chapter 5 of Title 17 or to federal law enforcement or prosecutorial officials pursuant to
54 the issuance of a search warrant pursuant to 21 U.S.C. or a grand jury subpoena pursuant
55 to 18 U.S.C.; ~~and~~

56 (4) To the agency, the Georgia Composite Medical Board or any other state regulatory
57 board governing prescribers or dispensers in this state, or the Department of Community
58 Health for purposes of the state Medicaid program upon the issuance of a subpoena by
59 such agency, board, or department pursuant to their existing subpoena power or to the

60 federal Centers for Medicare and Medicaid Services upon the issuance of a subpoena by
61 the federal government pursuant to its existing subpoena powers; and

62 (5)(A) To not more than two individuals who are members of the prescriber's or
63 dispenser's staff, provided that such individuals:

64 (i) Are licensed under Chapter 11, 30, 34, or 35 of Title 43;

65 (ii) Are registered under Title 26;

66 (iii) Are licensed under Chapter 26 of Title 43 and submit to the annual registration
67 process required by subsection (a) Code Section 16-13-35, and for purposes of this
68 Code section, such individuals shall not be deemed exempted from registration as set
69 forth in subsection (g) of Code Section 16-13-35; or

70 (iv) Submit to the annual registration process required by subsection (a) Code Section
71 16-13-35, and for purposes of this Code section, such individuals shall not be deemed
72 exempted from registration as set forth in subsection (g) of Code Section 16-13-35;

73 (B) Such individuals may retrieve and review such information strictly for the purpose
74 of:

75 (i) Providing medical or pharmaceutical care to a specific patient; or

76 (ii) Informing the prescriber or dispenser of a patient's potential use, misuse, abuse,
77 or underutilization of prescribed medication;

78 (C) All information retrieved and reviewed by such individuals shall be maintained in
79 a secure and confidential manner in accordance with the requirements of subsection (f)
80 of this Code section; and

81 (D) The delegating prescriber or dispenser may be held civilly liable and criminally
82 responsible for the misuse of the prescription information obtained by such individuals.

83 (c.1) An individual authorized to access electronic data base prescription information
84 pursuant to this part may:

85 (1) Communicate concerns about a patient's potential usage, misuse, abuse, or
86 underutilization of a controlled substance with ~~other~~ prescribers and dispensers that are
87 involved in the patient's health care; or

88 (2) Report potential violations of this article to the agency for review or investigation.
89 Following such review or investigation, the agency may:

90 (A) Refer instances of a patient's possible personal misuse or abuse of controlled
91 substances to the patient's primary prescriber to allow for potential intervention and
92 impairment treatment;

93 (B) Refer probable violations of controlled substances being acquired for illegal
94 distribution, and not solely for a patient's personal use, to the appropriate authorities for
95 further investigation and potential prosecution; or

96 (C) Refer probable regulatory violations by prescribers or dispensers to the regulatory
97 board governing such person."

98 **SECTION 3.**

99 Said chapter is further amended by revising Code Section 16-13-63, relating to liability, as
100 follows:

101 "16-13-63.

102 (a)(1) Nothing in this part shall require a dispenser ~~or prescriber~~ to obtain information
103 about a patient from the ~~program~~ electronic data base established pursuant to ~~this part~~
104 Code Section 16-13-57; provided, however, that dispensers are encouraged to obtain such
105 information while keeping in mind that the purpose of such data base includes reducing
106 duplicative prescribing and overprescribing of controlled substances. A dispenser ~~or~~
107 ~~prescriber~~ shall not have a duty and shall not be held civilly liable for damages to any
108 person in any civil or administrative action or criminally responsible for injury, death, or
109 loss to person or property on the basis that the dispenser ~~or prescriber~~ did or did not seek
110 or obtain information from the electronic data base established pursuant to Code Section
111 16-13-57. ~~Nothing in this part shall create a private cause of action against a prescriber~~
112 ~~or dispenser.~~

113 (2)(A) On and after January 1, 2018, when a prescriber is prescribing a controlled
114 substance listed in paragraph (1) or (2) of Code Section 16-13-26, he or she shall seek
115 and review information from the electronic data base established pursuant to Code
116 Section 16-13-57, unless:

- 117 (i) The prescription is for a three-day supply of such substance and less than 26 pills;
118 (ii) The patient is an inpatient in a hospital or health care facility, including, but not
119 limited to, a nursing home, an intermediate care home, a personal care home, or a
120 hospice program, which provides patient care and prescriptions to be administered
121 and used by a patient on the premises of the facility;
122 (iii) The patient is in an outpatient hospice program; or
123 (iv) The patient is under long-term care for cancer.

124 (B) A prescriber who violates this paragraph shall be held administratively accountable
125 to the state regulatory board governing the prescriber but shall not be held civilly liable
126 for damages to any person in any civil or administrative action or criminally responsible
127 for injury, death, or loss to person or property on the basis that the prescriber did or did
128 not seek or obtain information from such data base when prescribing such substance.

129 (3) A prescriber who has reviewed information from such electronic data base shall make
130 or cause to be made a notation in the patient's medical record stating the date and time
131 upon which such inquiry was made and identifying the individual's name who made such

132 search and review. If such data base does not allow access to such individual, a notation
 133 to that effect shall also be made containing the same information of date, time, and
 134 individual's name.

135 (4) Nothing in this part shall require a prescriber to obtain information from the
 136 electronic data base established pursuant to Code Section 16-13-57 when he or she is
 137 prescribing a controlled substance that is classified as a Schedule III, IV, or V controlled
 138 substance under Code Section 16-13-27, 16-13-28, or 16-13-29, respectively, or that is
 139 listed in paragraph (3) or (4) of Code Section 16-13-26, for a patient. Such prescriber
 140 shall not have a duty and shall not be held civilly liable for damages to any person in any
 141 civil or administrative action or criminally responsible for injury, death, or loss to person
 142 or property on the basis that the prescriber did or did not seek or obtain information from
 143 such data base when prescribing such substance.

144 (b) Except as provided in paragraphs (2) and (4) of subsection (a) of this Code section, a
 145 person who is injured by reason of any violation of this part shall have a cause of action for
 146 the actual damages sustained and, when appropriate, punitive damages; provided, however,
 147 that a ~~A~~ dispenser or prescriber acting in good faith shall not be held civilly liable for
 148 damages to any person in any civil or administrative action or criminally responsible for
 149 injury, death, or loss to person or property for receiving or using information from the
 150 electronic data base established pursuant to Code Section 16-13-57. Such injured person
 151 may also recover attorney's fees in the trial and appellate courts and the costs of
 152 investigation and litigation reasonably incurred."

153 **SECTION 4.**

154 Said chapter is further amended by revising subsections (d) and (e) of Code Section
 155 16-13-64, relating to violations, criminal penalties, and civil damages, as follows:

156 ~~"(d) Any person who is injured by reason of any violation of this part shall have a cause~~
 157 ~~of action for the actual damages sustained and, where appropriate, punitive damages. Such~~
 158 ~~person may also recover attorney's fees in the trial and appellate courts and the costs of~~
 159 ~~investigation and litigation reasonably incurred.~~

160 ~~(e)~~(d) The penalties provided by this Code section are intended to be cumulative of other
 161 penalties which may be applicable and are not intended to repeal such other penalties."

162 **SECTION 5.**

163 Said chapter is further amended in Code Section 16-13-71, relating to the definition of a
 164 dangerous drug, by revising paragraph (635) of subsection (b) as follows:

165 "(635) Naloxone — See exceptions;"

166 **SECTION 6.**

167 Said chapter is further amended in Code Section 16-13-71, relating to the definition of a
 168 dangerous drug, by adding a new paragraph to subsection (c) to read as follows:

169 "(14.25) Naloxone — shall also be exempt from subsections (a) and (b) of this Code
 170 section when used for drug overdose prevention and when supplied by a dispenser as
 171 follows:

172 (A) Nasal adaptor rescue kits containing a minimum of two prefilled 2 ml. luer-lock
 173 syringes with each containing 1 mg./ml. of naloxone;

174 (B) Prepackaged nasal spray rescue kits containing single-use spray devices with each
 175 containing up to 4 mg./0.1 ml. of naloxone;

176 (C) Muscle rescue kits containing a 10 ml. multidose fliptop vial or two 1 ml. vials
 177 with a strength of 0.4 mg./ml. of naloxone; or

178 (D) Prepackaged kits of two muscle autoinjectors with each containing up to 0.4
 179 mg./ml. of naloxone;"

180 **SECTION 7.**

181 Article 2 of Chapter 16 of Title 45 of the Official Code of Georgia Annotated, relating to
 182 death investigations, is amended by revising subsection (a) of Code Section 45-16-24,
 183 relating to notification of suspicious or unusual deaths, as follows:

184 "(a) When any person individual dies in any county in this state:

185 (1) As a result of violence;

186 (2) By suicide or casualty;

187 (3) Suddenly when in apparent good health;

188 (4) When unattended by a physician;

189 (5) In any suspicious or unusual manner, with particular attention to those persons
 190 individuals 16 years of age and under;

191 (6) After birth but before seven years of age if the death is unexpected or unexplained;

192 (7) As a result of an execution carried out pursuant to the imposition of the death penalty
 193 under Article 2 of Chapter 10 of Title 17;

194 (8) When an inmate of a state hospital or a state, county, or city penal institution; ~~or~~

195 (9) After having been admitted to a hospital in an unconscious state and without
 196 regaining consciousness within 24 hours of admission; or

197 (10) As a result of an apparent drug overdose,

198 it shall be the duty of any law enforcement officer or other person having knowledge of
 199 such death to notify immediately the coroner or county medical examiner of the county in
 200 which the acts or events resulting in the death occurred or the body is found. For the
 201 purposes of this Code section, no person individual shall be deemed to have died

202 unattended when the death occurred while ~~the person~~ he or she was a patient of a hospice
 203 licensed under Article 9 of Chapter 7 of Title 31."

204 **SECTION 8.**

205 Said article is further amended by revising subsection (a) of Code Section 45-16-27, relating
 206 to when an inquest is to be held, as follows:

207 "(a) Coroners shall require an inquest to be conducted in their respective counties as
 208 follows:

209 (1) When any ~~person~~ individual dies under any circumstances specified in paragraphs (1)
 210 through ~~(8)~~ (10) of subsection (a) of Code Section 45-16-24; provided, however, that an
 211 inquest is shall not be required to be held, although the coroner is shall be authorized to
 212 hold an inquest, under the following circumstances:

213 (A) When upon the completion of the medical examiner's inquiry the peace officer in
 214 charge and the medical examiner are satisfied that, even though death resulted from
 215 violence, no foul play was involved. In this event, the peace officer in charge and the
 216 medical examiner shall make a written report of their investigation and findings to the
 217 division as set forth in Code Section 45-16-32, and upon their recommendation, the
 218 coroner shall make and file a proper death certificate;

219 (B) When there is sufficient evidence to establish the cause and manner of death, even
 220 though the medical examiner's inquiry revealed that death resulted from foul play;

221 (C) When no demand for an inquest is made within 30 days after the filing of the death
 222 certificate. However, if such demand is made by the party or parties affected by the
 223 death, the coroner is shall be authorized to hold the inquest;

224 (D) When upon the completion of the medical examiner's inquiry the medical examiner
 225 and peace officer in charge are sufficiently satisfied that death resulted from natural
 226 causes, and that medical examiner or coroner is willing to and does sign and file a
 227 proper death certificate, and no demand for an inquest is made within 30 days
 228 thereafter;

229 (D.1) In cases of deaths resulting from an accident involving any civil aircraft, it shall
 230 be the responsibility of the peace officer in charge to notify the National Transportation
 231 Safety Board or the Federal Aviation Administration of such accident, to proceed to the
 232 scene and guard the area in such manner that no bodies, wreckage, cargo, or mail shall
 233 be moved or disturbed until authorized by a representative of the National
 234 Transportation Safety Board or the Federal Aviation Administration except to the extent
 235 necessary to remove ~~persons~~ individuals injured or trapped, to protect the wreckage
 236 from further damage, or to protect the public from injury. When ~~Where~~ it is necessary
 237 to move aircraft wreckage, mail, or cargo, sketches, descriptive notes, and photographs

238 shall be made, if possible, of the original positions and condition of the wreckage and
 239 any significant impact marks. The coroner or medical examiner shall assist
 240 investigators from the National Transportation Safety Board or the Federal Aviation
 241 Administration as authorized by federal law;

242 (E) When after full and complete investigation no evidence of foul play is found in
 243 cases of hidden cause of death which fall under the jurisdiction of the coroner. The
 244 coroner shall be authorized to sign the death certificate on the basis of the information
 245 given to him or her in the reports of the peace officer in charge and the medical
 246 examiner, provided that, in such hidden causes of death, after a complete investigation,
 247 if sufficient medical history is obtained by the coroner, the peace officer in charge, or
 248 the medical examiner to disclose the cause of death and if the attending physician will
 249 sign the death certificate, such cases shall not come under the jurisdiction of the
 250 coroner; provided, further, that, if there are sufficient competent eyewitnesses to an act
 251 in the opinion of the peace officer in charge, such cases shall not come under the
 252 jurisdiction of the coroner; or

253 (F) In cases of deaths of personnel in the armed forces of the United States government
 254 resulting from airplane disasters involving airplanes of the armed forces, including
 255 crashes or explosions, which deaths shall not come under the jurisdiction of the coroner.
 256 It shall be the responsibility of the peace officer in charge to notify the proper armed
 257 forces of the United States government immediately of such airplane crashes or
 258 explosions in order that they may send their trained forces to the scene for investigation.
 259 It shall be the duty of the peace officer in charge, when notified of such crashes or
 260 explosions, to proceed to the scene and guard the area in such manner that no bodies
 261 or parts of said airplanes shall be moved or disturbed until the arrival of proper
 262 investigating officers from the armed forces of the United States government;

263 (2) When an inmate of a state hospital or a state, county, or city penal institution dies
 264 unexpectedly without an attending physician or as a result of violence. The chief medical
 265 examiner or his or her designee, regional medical examiner, or local medical examiner
 266 shall perform all medical examiners' inquiries. The coroner, in those counties in which
 267 such office has not been replaced by a local medical examiner, shall hold an inquest after
 268 receiving the written reports as set forth in Code Section 45-16-32;

269 (3) When ordered by a court in connection with a medical examiner's inquiry ordered by
 270 that court pursuant to subsection (c) of Code Section 45-16-24; or

271 (4) Notwithstanding any other provisions of this subsection, no ~~person~~ individual shall
 272 be deemed to have died unattended by a physician when the death occurred while ~~the~~
 273 person he or she was a patient of a hospice licensed under Article 9 of Chapter 7 of
 274 Title 31."

275

SECTION 9.

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