House Bill 900 (AS PASSED HOUSE AND SENATE)

By: Representatives Cooper of the 43rd, Weldon of the 3rd, Hawkins of the 27th, Parrish of the 158th, Harden of the 148th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Part 2 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to electronic data base of prescription information, so as to authorize the retention of data base information for two years; to provide for delegates of prescribers and dispensers to access data base information under certain conditions; to revise language relating to subpoenas and search warrants; to provide for accessing data base information for purposes of investigation of potential abuse; to provide for the release of nonpatient specific data to the agency for instructional, drug abuse prevention, and research purposes; to limit liability; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to electronic data base of prescription information, is amended in Code Section 16-13-59, relating to information to include for each Schedule II, III, IV, or V controlled substance prescription, by revising subsection (e) as follows:

"(e) The agency shall not access or allow others to access any identifying prescription information from the electronic data base after ~~one year~~ two years from the date such information was originally received by the agency. The agency may retain aggregated prescription information for a period of ~~one year~~ two years from the date the information is received but shall promulgate regulations and procedures that will ensure that any identifying information the agency receives from any dispenser or reporting entity that is ~~one year~~ two years old or older is deleted or destroyed on an ongoing basis in a timely and secure manner."

SECTION 2.

Said part is further amended in Code Section 16-13-60, relating to privacy and confidentiality, use of data, and security program, as follows:

″16-13-60.

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

(b) The agency, in conjunction with the board, shall establish and maintain strict procedures to ensure that the privacy and confidentiality of patients, prescribers, and patient and prescriber information collected, recorded, transmitted, and maintained pursuant to this part are protected. Such information shall not be disclosed to any person or entity except as specifically provided in this part and only in a manner which in no way conflicts with the requirements of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, P.L. 104-191. Nothing in this subsection shall be construed to prohibit the agency from accessing prescription information as a part of an investigation into suspected or reported abuses or regarding illegal access of the data. Such information may be used in the prosecution of an offender who has illegally obtained prescription information.

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

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

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

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

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

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

(3) To local~~,~~ or state~~, or federal~~ law enforcement or prosecutorial officials pursuant to the issuance of a search warrant from an appropriate court or official in the county in

which the office of such law enforcement or prosecutorial officials are located pursuant to Article 2 of Chapter 5 of Title 17 or to federal law enforcement or prosecutorial officials pursuant to the issuance of a search warrant pursuant to 21 U.S.C. or a grand jury subpoena pursuant to 18 U.S.C.; and

(4) To the agency, ~~or~~ the Georgia Composite Medical Board or any other state regulatory board governing prescribers or dispensers in this state, or the Department of Community Health for purposes of the state Medicaid program upon the issuance of ~~an administrative~~ a subpoena ~~issued by a Georgia state administrative law judge~~ by such agency, board, or department pursuant to their existing subpoena power or to the federal Centers for Medicare and Medicaid Services upon the issuance of a subpoena by the federal government pursuant to its existing subpoena powers.

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

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

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

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

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

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

(d) The board may provide statistical data to government entities and other entities for statistical, research, educational, or grant application purposes after removing information that could be used to identify prescribers or individual patients or persons who received prescriptions from dispensers; the board may provide nonpatient specific data to the agency for instructional, drug abuse prevention, and research purposes.

(e) Any person or entity who receives electronic data base prescription information or related reports relating to this part from the agency shall not provide such information or reports to any other person or entity except by order of a court of competent jurisdiction pursuant to this part.

(f) Any permissible user identified in this part who directly accesses electronic data base prescription information shall implement and maintain a comprehensive information

security program that contains administrative, technical, and physical safeguards that are substantially equivalent to the security measures of the agency. The permissible user shall identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, or other compromise of the information and shall assess the sufficiency of any safeguards in place to control the risks.

(g) No provision in this part shall be construed to modify, limit, diminish, or impliedly repeal any authority existing on June 30, 2011, of a licensing or regulatory board or any other entity so authorized to obtain prescription information from sources other than the data base maintained pursuant to this part; provided, however, that the agency shall be authorized to release information from the data base only in accordance with the provisions of this part."

SECTION 3.

Said part is further amended in Code Section 16-13-63, relating to liability, as follows:

"16-13-63.

(a) Nothing in this part shall require a dispenser or prescriber to obtain information about a patient from the program established pursuant to this part. A dispenser or prescriber shall not have a duty and shall not be held civilly liable for damages to any person in any civil or administrative action or criminally responsible for injury, death, or loss to person or property on the basis that the dispenser or prescriber did or did not seek or obtain information from the electronic data base established pursuant to Code Section 16-13-57. Nothing in this part shall create a private cause of action against a prescriber or dispenser.

(b) A dispenser or prescriber acting in good faith shall not be held civilly liable for damages to any person in any civil or administrative action or criminally responsible for injury, death, or loss to person or property for receiving or using information from the electronic data base established pursuant to Code Section 16-13-57."

SECTION 4.

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