

COMMITTEE ON HEALTH, HOSPITALS AND HUMAN SERVICES

11/22/2024-REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY

**BILL NO. 35-0295**

**Thirty-Fifth Legislature of the Virgin Islands**

**July 15, 2024**

An Act amending title 19 Virgin Islands Code, part III, chapter 29 requiring the Virgin Islands Department of Health to establish and administer the “Virgin Islands Prescription Drug Monitoring Program” to provide prescription drug monitoring, and for other related purposes

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**PROPOSED BY:** Senator Donna A. Frett-Gregory

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1 *Be it enacted by the Legislature of the Virgin Islands:*

2       **SECTION 1.** Title 19 Virgin Islands Code, part III, chapter 29 is amended by adding  
3 subchapter IA to read as follows:

4               “Subchapter IA. Prescription Drug Monitoring Program

5 **§ 635. Short title**

6       This subchapter may be cited as the “Virgin Islands Prescription Drug Monitoring  
7 Program Act”.

8 **§ 635a. Definitions**

9 As used in this subchapter:

10       (a) “Certified law enforcement prescription drug diversion investigator” means a law  
11 enforcement officer assigned by a qualified law enforcement agency to investigate prescription

1 drug diversion and who has completed a certification course in prescription drug diversion  
2 approved by the Prescription Drug Monitoring Program Advisory Committee.

3 (b) "Commissioner" means the Commissioner of the Virgin Islands Department of  
4 Health.

5 (c) "Controlled substance" means a drug, substance, or immediate precursor in  
6 Schedules II, III, IV, or V of 19 V.I.C § 595.

7 (d) "Department" means the Virgin Islands Department of Health.

8 (e) "Dispense" means to deliver a controlled substance to an ultimate user by or  
9 pursuant to the lawful order of a practitioner, including the packaging, labeling, or  
10 compounding necessary to prepare the controlled substance for that delivery.

11 (f) "Dispenser" means a practitioner who dispenses. "Dispenser" does not include:

12 (1) A licensed hospital pharmacy when it is distributing controlled substances for the  
13 purpose of outpatient services, inpatient hospital care, or at the time of discharge from a  
14 hospital, except for a pharmacy owned by a hospital that has a retail pharmacy permit when the  
15 pharmacy is distributing controlled substances directly to the public;

16 (2) A wholesale distributor of Schedules II-V controlled substances; or

17 (3) A practitioner or other authorized person who administers a controlled substance.

18 (g) "Exchangeability" means the ability of the prescription drug monitoring program  
19 to electronically share reported information with another state's prescription drug monitoring  
20 program if the information concerns the dispensing of a controlled substance either:

21 (1) To a patient who resides in the other state; or

22 (2) Prescribed by a practitioner whose principal place of business is in the other state.

23 (h) "Investigation" means an active inquiry that is being conducted with a reasonable,  
24 good-faith belief that the inquiry:

1 (1) could lead to the filing of administrative, civil, or criminal proceedings; or

2 (2) is ongoing and continuing and a reasonable, good-faith anticipation exists for  
3 securing an arrest or prosecution in the foreseeable future.

4 (i) “Licensing board” means the board that regulates and licenses practitioners or  
5 dispensers who prescribe or dispense medications.

6 (j) “Opioid” means a drug or medication that relieves pain, including:

7 (1) Hydrocodone;

8 (2) Oxycodone;

9 (3) Morphine;

10 (4) Codeine; and

11 (5) Fentanyl.

12 (k) “Patient” means the person or animal who is the ultimate user of a controlled  
13 substance for whom a lawful prescription is issued and for whom a controlled substance is  
14 lawfully dispensed.

15 (l) “Practitioner” means:

16 (1) A physician, dentist, veterinarian, advanced practice nurse, physician  
17 assistant, pharmacist, scientific investigator, or other person licensed, registered, or  
18 otherwise permitted to prescribe, distribute, dispense, conduct research with respect to,  
19 or to administer a controlled substance during professional practice or research in the  
20 Territory; and

21 (2) A pharmacy, hospital, or other institution licensed, registered, or otherwise  
22 permitted to distribute, dispense, conduct research with respect to, or to administer a  
23 controlled substance during professional practice or research in the Territory.

1 (m) "Prescribe" means to issue a direction or authorization, by prescription, permitting  
2 a patient lawfully to obtain a controlled substance.

3 (n) "Prescriber" means a practitioner who prescribes a controlled substance.

4 (o) "Prescription" means a controlled substance lawfully prescribed and subsequently  
5 dispensed.

6 (p) "Prescription drug monitoring database" or "PDMD" means the electronic  
7 prescription drug monitoring database established under the Virgin Islands Drug Monitoring  
8 Program established in section 635b (a)(1).

9 (q) "Prescription drug monitoring program" means a program that collects, manages,  
10 analyzes, and provides information regarding controlled substances.

11 (r) "Prescription Drug Monitoring Program Advisory Committee" or "Committee"  
12 means the Prescription Drug Monitoring Program Advisory Committee established in section  
13 635c.

14 (s) "Qualified law enforcement agency" means a law enforcement agency that has a  
15 certified law enforcement prescription drug diversion investigator and a commissioner or chief  
16 officer who has successfully completed a certification course in prescription drug diversion  
17 approved by the Committee.

18 (t) "Schedule II" means controlled substances placed in Schedule II under 19 V.I.C. §  
19 595(c).

20 (u) "Schedule III" means controlled substances placed in Schedule III under 19 V.I.C.  
21 § 595(c).

22 (v) "Schedule IV" means controlled substances placed in Schedule IV under 19 V.I.C.  
23 § 595(c).

1 (w) “Schedule V” means controlled substances placed in Schedule V under 19 V.I.C. §  
2 595(c).

3 (x) “Ultimate user” means a person who lawfully possesses a controlled substance for:

4 (1) The person's own use;

5 (2) The use of a member of the person's household; or

6 (3) Administering to an animal owned by a person or by a member of the person's  
7 household.

8 (y) “Virgin Islands Prescription Drug Monitoring Program” or “Program” means the  
9 prescription drug monitoring program established in section 635b.

10 **§ 635b. Establishment of Program; requirements**

11 (a) The Department shall establish and administer the Virgin Islands Prescription Drug  
12 Monitoring Program. Under the Program, the Department shall:

13 (1) establish, maintain, and administer an electronic prescription drug monitoring  
14 database system to collect and store controlled substance dispensing information;

15 (2) provide dispensers with a basic file layout to enable electronic transmission  
16 of the information required under this subchapter; and

17 (3) establish and maintain a process for verifying the credentials of and  
18 authorizing the use of prescription information in the PDMD by those individuals and  
19 entities listed in sections 635d. and 635e.

20 (b) Each dispenser shall submit, by electronic means, information to the PDMD  
21 regarding each controlled substance dispensed that includes:

22 (1) the dispenser's identification number;

23 (2) the date the prescription was filled;

24 (3) the prescription number;

- 1 (4) whether the prescription is new or is a refill;
- 2 (5) the National Drug Code for the controlled substance that is dispensed;
- 3 (6) the quantity of the controlled substance dispensed;
- 4 (7) the number of days' supply dispensed;
- 5 (8) the number of refills ordered;
- 6 (9) a patient identifier that is not a social security number or a driver's license  
7 number;
- 8 (10) the patient's name;
- 9 (11) the patient's address;
- 10 (12) the patient's date of birth;
- 11 (13) the patient's gender;
- 12 (14) the prescriber's identification number;
- 13 (15) the date the prescription was issued by the prescriber; and
- 14 (16) the source of the payment for the prescription.

15 (c) Each dispenser shall submit the prescription information set forth in subsection (b)  
16 every 24 hours. If a dispenser is temporarily unable to comply with this subsection due to an  
17 equipment failure or other circumstances, the dispenser shall immediately notify the  
18 Department.

19 (d) The Department may issue a waiver to a dispenser that is unable to submit  
20 prescription information by electronic means acceptable to the Department. The waiver may  
21 permit the dispenser to submit prescription information to the Department by paper form or  
22 other means, provided all information required in subsection (b) is submitted in this alternative  
23 format and in accordance with the frequency requirements established in subsection (c).  
24 Requests for waivers must be submitted in writing to the Department.

1 (e) Except as required in subsection (f), a practitioner is encouraged to access or check  
2 the information in the PDMD before prescribing, dispensing, or administering medications.

3 (f)(1) Except as provided in paragraph (2), a practitioner shall consult the PDMD to  
4 review a patient's controlled substance dispensing history every time when prescribing,  
5 dispensing, or administering an opioid from Schedule II or Schedule III or a benzodiazepine  
6 medication to a patient.

7 (2) (A) Paragraph (1) does not apply to a prescriber or dispenser if the medication is  
8 prescribed or otherwise provided to a patient:

9 (i) currently receiving hospice or palliative care;

10 (ii) during an inpatient hospital admission or at discharge;

11 (iii) in a nursing home or residential care facility that uses a sole source pharmacy;

12 or

13 (iv) at the scene of an emergency, in a licensed ground ambulance or in an air  
14 ambulance.

15 (B) Paragraph (1) does not apply to situations in which the PDMD is not  
16 accessible due to technological or electrical failure.

17 (g) A prescriber who has reviewed information from the PDMD shall make or cause  
18 to be made a notation in the patient's medical record stating the date and time upon which the  
19 inquiry was made and identifying the prescriber or designee's name who made the search and  
20 review. If the PDMD does not allow access to such individual, a notation to that effect shall  
21 also be made containing the same information of date, time, and individual's name.

22 (h) The Department may amend, by regulation, the exemptions listed in subsection  
23 (f)(2) upon a recommendation from the Committee and a showing that the exemption or lack  
24 of exemption is unnecessarily burdensome or has created a hardship.

1 (i) A licensed oncologist shall check the PDMD when prescribing any drug listed in  
2 subsection (f)(1) to a patient on an initial malignant episodic diagnosis and every three months  
3 following the diagnosis while continuing treatment.

4 (j) A licensing board shall adopt regulations requiring practitioners who have the  
5 authority to prescribe, dispense, or administer medications to check the information in the  
6 PDMD as provided in subsection (f).

7 (k) The Department, by regulation, shall create a process for patients to address errors,  
8 inconsistencies, and other matters in their record, including cases of breach of privacy and  
9 security.

10 (l) The Department shall develop algorithms within the PDMD that alert a practitioner  
11 if the practitioner's patient is being prescribed opioids by more than two practitioners within  
12 any thirty-day period.

13 (m) The Department shall purge prescription information from the PDMD after four  
14 years have elapsed from the date the prescription was dispensed.

15 **§ 635c. Prescription Drug Monitoring Program Advisory Committee; Creation**

16 (a) There is established within the Office of the Commissioner of Health the  
17 Prescription Drug Monitoring Program Advisory Committee to consult with and advise the  
18 Department on matters related to the establishment, maintenance, operation, and evaluation of  
19 the Program.

20 (b) The Committee consists of five voting members and the Commissioner, or a  
21 designee, who shall serve as a non-voting chairperson. The voting members of the Committee  
22 are:

23 (1) a mental health provider or certified drug and alcohol counselor; and

24 (2) one representative designated by each of the following organizations:



1 (A) Virgin Islands Board of Medical Examiners;

2 (B) Virgin Islands Board of Pharmacy;

3 (C) Virgin Islands Department of Justice; and

4 (D) Virgin Islands Territorial Public Defender Office.

5 (c) Each member shall serve a three-year term or until the appointment of the member's  
6 successor.

7 (d) Three voting members of the Committee constitute a quorum. Actions of the  
8 Committee are adopted when a majority of the members vote in favor of the action.

9 (e) The Committee shall hold not less than four meetings per year, or more often upon  
10 the call of a meeting by the chairperson or the majority of the members.

11 (f) Members may attend meetings in person, remotely by audiovisual means, or by  
12 audio-only.

13 (g) The Department shall provide staff assistance to the Committee.

14 (h) Members receive no compensation but must be reimbursed for their actual and  
15 necessary expenses incurred in the performance of their duties.

16 **§ 635d. Direct access to the PDMD**

17 (a) The following persons are provided direct access to information in the PDMD:

18 (1) a prescriber or dispenser or a designee for the sole purpose of providing  
19 medical or pharmaceutical care to a specific patient. The delegating prescriber or  
20 dispenser may be held civilly liable and criminally responsible for the misuse of the  
21 prescription information obtained by the designee;

22 (2) employees of the Department; and

23 (3) a certified law enforcement prescription drug diversion investigator who has  
24 complied with subsections (b) and (c).

1 (b) To be granted access to the PDMD, a certified law enforcement prescription drug  
2 diversion investigator shall provide the following information to the Department:

3 (1) the identification credentials assigned by the Department and the case number of  
4 the investigation; and

5 (2) an annual report from a qualified law enforcement agency.

6 (c) A qualified law enforcement agency shall submit to the Department an annual  
7 report of the data accessed by all certified law enforcement prescription drug diversion  
8 investigators in the qualified law enforcement agency, including written verification that the  
9 inquiries were part of a lawful prescription drug diversion investigation and providing the case  
10 number and the disposition of the investigation. The Department shall prepare a verification  
11 form and make the form available annually to the qualified law enforcement agency. The  
12 qualified law enforcement agency shall return the completed verification form to the  
13 Department not later than 30 days after its receipt. The certified law enforcement prescription  
14 drug diversion investigator's failure to timely submit the verification form results in the  
15 immediate suspension of access to the PDMD until the verification form has been submitted  
16 and the DOH has the opportunity, not to exceed seven days, to review the information on the  
17 verification form.

18 (d) The Department shall limit access to the Database to only those employees whose  
19 access is reasonably necessary to carry out this subchapter.

20 **§ 635e. Access to PDMD information**

21 (a) The following persons or entities may not directly access the PDMD, but may  
22 request information in the PDMD from the Department:

23 (1) a law enforcement officer pursuant to a criminal investigation but only after  
24 the law enforcement officer obtains a search warrant signed by a judge that demonstrates

1 probable cause to believe that a violation of federal or Virgin Islands criminal law has  
2 occurred, and that specified information contained in the PDMD would assist in the  
3 investigation of the crime, and that the specified information should be released to the  
4 law enforcement officer;

5 (2) a regulatory body engaged in the supervision of licensing or regulatory boards  
6 of practitioners authorized to prescribe or dispense controlled substances;

7 (3) a person or entity investigating a case of breaches of privacy of the PDMD or  
8 its records;

9 (4) medical examiners as authorized by law to investigate causes of deaths for  
10 cases under investigation pursuant to his official duties and responsibilities;

11 (5) the Department of Human Services if:

12 (A) the purpose of the PDMD information is related to an investigation under  
13 title 5 Virgin Islands Code, chapter 201, subchapter IV and not pursuant to a  
14 criminal investigation by a law enforcement officer; and

15 (B) the Department of Human Services has obtained a court order pursuant  
16 to 5 V.I.C. § 2556 to access the information;

17 (6) a patient or authorized agent of a patient, who requests his own prescription  
18 monitoring information; or

19 (7) a parent or legal guardian of a minor child who requests the minor child's  
20 information.

21 **§ 635f. Confidentiality**

22 (a) The PDMD and all information contained in the PDMD and any records maintained  
23 by the Department, or by an entity contracting with the Department, that is submitted to,

1 maintained, or stored as a part of the PDMD is confidential and not subject to disclosure under  
2 the Virgin Islands Public Records Act, 3 V.I.C. §881 et. seq.

3 (b) The Department shall establish regulations to ensure that the privacy and  
4 confidentiality of patients are maintained and that patient information collected, recorded,  
5 transmitted, and stored is protected and not disclosed to persons except as provided for in this  
6 subchapter.

7 **§ 635g. Review of database information by the Department**

8 (a) The Department shall review the PDMD information monthly, including a review  
9 to identify information that appears to indicate whether a patient is obtaining prescriptions in a  
10 manner that may represent misuse or abuse of controlled substances, based on prescribing  
11 criteria determined by the Commissioner upon consultation with the Committee. The  
12 prescribing criteria must be posted on the website of the Department and be available in print  
13 upon request.

14 (b) (1) If the PDMD information appears to indicate misuse or abuse may have  
15 occurred, the Department shall notify the prescribers and dispensers who have prescribed or  
16 dispensed the prescriptions and provide three consecutive monthly reports to the prescribers  
17 and dispensers.

18 (2) If after three months of providing reports to the prescribers and dispensers, the  
19 information continues to suggest that misuse or abuse may be occurring, the Department shall  
20 send a report to the licensing boards.

21 (3) If misuse or abuse is identified, the Department shall notify the practitioners and  
22 dispensers who prescribed or dispensed the prescriptions and the United States Diversion  
23 Control Division of the United States Drug Enforcement Administration.

1 **§ 635h. Unlawful acts and penalties**

2 (a) A dispenser who knowingly and intentionally fails to submit prescription  
3 monitoring information as required in section 635b. or knowingly and intentionally submits  
4 incorrect prescription information is guilty of a felony and, upon conviction, shall be sentenced  
5 to a term of imprisonment of not more than five years, or to payment of a fine not to exceed  
6 \$50,000, or both, and the conviction shall be reported to the licensing board for action to be  
7 taken against the dispenser's license.

8 (b) A practitioner who purposely fails to access the PDMD as required by section  
9 635b(f)(1) is subject to disciplinary action by the licensing board.

10 (c) An individual authorized to access prescription information in the PDMD who  
11 negligently uses, releases, or discloses the information in a manner or for a purpose in violation  
12 of this subchapter is guilty of a misdemeanor. Any person who is convicted of negligently  
13 using, releasing, or disclosing the information in violation of this subchapter shall, upon a  
14 subsequent conviction, be guilty of a felony and shall be sentenced to a term of imprisonment  
15 of not more than three years, or to payment of a fine not to exceed \$5,000, or both.

16 (d)(1) An individual authorized to access prescription information in the PDMD who  
17 knowingly obtains or discloses the information in a manner or for a purpose in violation of this  
18 subchapter is guilty of a felony and, upon conviction, shall be sentenced to a term of  
19 imprisonment of not more than five years, or to payment of a fine not to exceed \$50,000, or  
20 both.

21 (2) Any person who knowingly obtains, attempts to obtain, or discloses prescription  
22 information in the PDMD under false pretenses is guilty of a felony and, upon conviction, shall  
23 be sentenced to a term of imprisonment of not more than five years, or to payment of a fine not  
24 to exceed \$100,000, or both.

1           (3) Any person who obtains or discloses prescription information in the PDMD with  
2 the intent to sell, transfer, or use the information for commercial advantage, personal gain, or  
3 malicious harm is guilty of a felony and, upon conviction, shall be sentenced to a term of  
4 imprisonment for not less than two years but not more than ten years, or to payment of a fine  
5 not to exceed \$250,000, or both.

6           (e) The penalties provided in this section are intended to be cumulative of other  
7 penalties which may be applicable and are not intended to repeal other penalties.

8 **§ 635i. Information exchange with other prescription drug monitoring programs**

9           (a) The Department may provide prescription monitoring information to federal  
10 prescription drug monitoring programs or other states' prescription drug monitoring programs,  
11 and the information may be used by those programs consistent with this subchapter, provided  
12 the program or system, as determined by the Department, contains legal, administrative,  
13 technical, and physical safeguards that meet or exceed the security measures of the Department  
14 for the operation of the PDMD.

15           (b) The Department may request and receive prescription monitoring information  
16 from federal prescription drug monitoring programs or other states' prescription drug  
17 monitoring programs and may use information consistent with this subchapter.

18           (c) The Department may develop the capability to transmit information to other  
19 prescription drug monitoring programs and receive information from other prescription drug  
20 monitoring programs employing the standards of exchangeability.

21           (d) The Department may enter into written agreements with federal prescription drug  
22 monitoring programs or other states' prescription drug monitoring programs for the purpose of  
23 describing the terms and conditions for sharing prescription information.

1 **§ 635j. Authority to contract and seek funding**

2 (a)(1) The Department may contract to establish and administer the Program and may  
3 make application for, receive, and administer grant funding from public or private sources for  
4 this purpose.

5 (2) A contractor shall comply with the provisions regarding confidentiality of  
6 prescription information as outlined in this subchapter and is subject to the penalties specified  
7 in this subchapter for unlawful acts.

8 (b) A fee may not be levied against practitioners for the purpose of funding or  
9 complying with the Program.

10 **§ 635k. Annual report on performance measures**

11 The Department shall prepare and submit an annual report on performance measures of  
12 the Program to the Governor and the Chairperson of the Committee on Health, Hospitals and  
13 Human Services of the Legislature of the Virgin Islands by December 1st of each calendar year.  
14 Performance measures include outcomes relating to the reduction of the rate of inappropriate  
15 use of controlled substances through monitoring efforts and the reduction of the quantity of  
16 controlled substances obtained by individuals attempting to engage in fraud and deceit.

17 **§ 635l. Regulations**

18 The Department shall promulgate regulations necessary to effectuate the purposes of this  
19 subchapter.”

20 **SECTION 2.** Title 5 Virgin Islands Code, subtitle 2, chapter 201, subchapter IV is  
21 amended by adding section 2556 to read as follows:

22 “§ 2556. Access to information in the prescription drug monitoring database

1 (a) The Department of Human Services may petition the court to allow an  
2 investigator investigating child abuse and neglect matters to request information from the  
3 prescription drug monitoring database established in 19 V.I.C. § 635b.

4 (b) The court may grant a petition under this section if the Department of Human  
5 Services demonstrate probable cause that:

6 (1) the person was or is in possession of one or more prescription drugs;

7 (2) the person gave birth to a baby; and

8 (3) the person or the baby tested positive for one or more prescription drugs at  
9 the time of the birth of the baby.”

10 **SECTION 3.** This bill becomes effective 180 days after the enactment date of this act.

11 **BILL SUMMARY**

12 Section 1 of this bill amends title 19 of the Virgin Islands Code, part III, chapter 29 to:  
13 require the Virgin Islands Department of Health (“DOH”) to establish and administer the Virgin  
14 Islands Prescription Drug Monitoring Program (“Program”) that includes the development of  
15 an electronic prescription drug monitoring database (“PDMD”) to collect and store controlled  
16 substance dispensing information; establish the Prescription Drug Monitoring Program  
17 Advisory Committee to consult with and advise the DOH on matters related to the  
18 establishment, maintenance, operation, and evaluation of the Program; require a dispenser to  
19 submit information to the PDMD regarding each controlled substance dispensed to a patient;  
20 require a practitioner, unless exempted, to consult the PDMD when prescribing, dispensing, or  
21 administering an opioid from Schedule II or Schedule III or a benzodiazepine medication to a  
22 patient and to make a notation of the inquiry in the patient’s medical record; authorize certain  
23 persons or entities to directly access the PDMD or to request information from the PDMD;



1 establish that information in the PDMD is confidential and not subject to disclosure under the  
2 Virgin Islands Public Records Act, 3 V.I.C. §881 et. seq.; require the DOH to establish  
3 regulations to ensure that the privacy and confidentiality of patients are maintained; establish  
4 unlawful acts and penalties as it relates to the use of the PDMD; allow the DOH to provide  
5 prescription monitoring information to federal prescription drug monitoring programs or other  
6 states' prescription drug monitoring programs; allow the DOH to contract to develop,  
7 implement, maintain, or enhance the Program and seek funding for that purpose; and require  
8 the DOH to submit an annual report on performance measures of the Program to the Governor  
9 and the Chairperson of the Committee on Health, Hospitals and Human Services of the  
10 Legislature of the Virgin Islands by December 1st. Section 2 of this bill amends title 5 Virgin  
11 Islands Code, subtitle 2, chapter 201, subchapter IV to establish criteria necessary to allow the  
12 Department of Human Services to request information in the PDMD. Section 3 of this bill  
13 makes the provisions of this bill effective 180 days after enactment.

14 **BR23-0008/May 16, 2024/GC**