

1 **H. B. 4471**

2
3 (By Delegates Manypenny, Swartzmiller, D. Poling,
4 Caputo, Frazier, Moore, Morgan,
5 Barill, Moye and Sumner)

6 [Introduced February 9, 2012; referred to the
7 Committee on Health and Human Resources then the Judiciary.]

**FISCAL
NOTE**

8
9 A Bill to amend and reenact §60A-9-5 of the Code of West Virginia,
10 1931, as amended, relating to the controlled substances
11 monitoring generally; permitting specific law-enforcement
12 officials who are members of federally affiliated drug task
13 forces access to certain confidential pharmaceutical
14 information to identify unusual prescription drug behavior;
15 requiring the State Board of Pharmacy to issue reports to
16 certain law-enforcement officials, licensing authorities and
17 prescribers that identify abnormal prescription practices;
18 establishing an advisory committee to recommend the parameters
19 of abnormal prescribing patterns and to recommend other
20 actions that could reduce the amount of misuse of prescription
21 drugs; establishing a felony offense for misusing information
22 from the controlled substance database; requiring the Board of
23 Pharmacy to implement a real-time database when available and
24 when resources permit; requiring implementation of the
25 parameters of abnormal prescribing patterns shall be

1 contingent on available funding; requiring a report to the
2 Legislative Oversight Commission on Health and Human Resources
3 Accountability; granting rule-making authority; and providing
4 immunity to prescribing practitioners for certain reporting
5 based on review of patient specific information contained in
6 the controlled substances monitoring database.

7 *Be it enacted by the Legislature of West Virginia:*

8 That §60A-9-5 of the Code of West Virginia, 1931, as amended,
9 be amended and reenacted to read as follows:

10 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

11 **§60A-9-5. Confidentiality; limited access to records; period of**
12 **retention; no civil liability for required reporting.**

13 (a) (1) The information required by this article to be kept by
14 the State Board of Pharmacy is confidential and is open to
15 inspection only by inspectors and agents of the State Board of
16 Pharmacy, members of the West Virginia State Police expressly
17 authorized by the Superintendent of the West Virginia State Police
18 to have access to the information, authorized agents of local law-
19 enforcement agencies and deputy sheriffs as a member of a federally
20 affiliated drug task force, authorized agents of the federal Drug
21 Enforcement Administration, duly authorized agents of the Bureau
22 for Medical Services ~~and the Workers' Compensation Commission~~, duly
23 authorized agents of the Office of the Chief Medical Examiner for

1 use in post-mortem examinations, duly authorized agents of
2 licensing boards of practitioners in this state and other states
3 authorized to prescribe Schedules II, III and IV controlled
4 substances, prescribing practitioners and pharmacists and persons
5 with an enforceable court order or regulatory agency administrative
6 subpoena: Provided, That all law-enforcement personnel who have
7 access to the controlled substances monitoring database shall be
8 granted access in accordance with applicable state laws and Board
9 of Pharmacy legislative rules and shall be certified as a West
10 Virginia law-enforcement officer and shall have successfully
11 completed U. S. Drug Enforcement Administration Diversion Training
12 and National Association of Drug Diversion Investigation Training.
13 ~~Provided, That all~~ All information released by the State Board of
14 Pharmacy must be related to a specific patient or a specific
15 individual or entity under investigation by any of the above
16 parties except that practitioners who prescribe controlled
17 substances may request specific data related to their Drug
18 Enforcement Administration controlled substance registration number
19 or for the purpose of providing treatment to a patient.

20 (2) Subject to the provisions of subdivision (1) of this
21 subsection, the board shall also review the West Virginia
22 Controlled Substance Monitoring Program database and issue reports
23 that identify abnormal or unusual practices of both health care
24 professionals and patients who exceed predetermined parameters. All

1 reports produced by the board shall be kept confidential and may
2 only be used in furtherance of communicating with licensing boards
3 regarding abnormal prescription and dispensing practices or by
4 prescribers to more effectively manage the medications of their
5 patients. The board shall maintain the information required by
6 this article for a period of not less than five years.
7 Notwithstanding any other provisions of this code to the contrary,
8 data obtained under the provisions of this article may be used for
9 compilation of educational, scholarly or statistical purposes as
10 long as the identities of persons or entities remain confidential.
11 No individual or entity required to report under section four of
12 this article may be subject to a claim for civil damages or other
13 civil relief for the reporting of information to the Board of
14 Pharmacy as required under and in accordance with the provisions of
15 this article.

16 (3) The board shall establish an advisory committee to
17 develop, implement and recommend parameters to be used in
18 identifying abnormal or unusual prescribing or dispensing patterns
19 in this state. This advisory committee shall:

20 (A) Consist of the following members: A licensed physician
21 member of the West Virginia Board of Medicine, a licensed dentist
22 member of the West Virginia Board of Dental Examiners, a licensed
23 physician member of the West Virginia Board of Osteopathy, a member
24 of the Controlled Substance Advisory Board of the Partnership for

1 Community Well-being, a licensed physician certified by the
2 American Board of Pain Medicine and a licensed physician board
3 certified in medical oncology recommended by the West Virginia
4 State Medical Association, a licensed physician board certified in
5 palliative care recommended by the West Virginia Center on End of
6 Life Care, a member of the West Virginia Board of Pharmacy, a
7 licensed physician member of the West Virginia Academy of Family
8 Practice Physicians and a representative of a controlled substance
9 wholesaler chosen by the Board of Pharmacy.

10 (B) Recommend parameters to identify abnormal or unusual
11 prescribing or dispensing patterns of use of controlled substances
12 for both patients and health care professionals in order to prepare
13 reports as requested in accordance with subsection (a), subdivision
14 (2) of this section.

15 (C) Recommend parameters unique to different health care
16 professionals due to the nature of their work such as palliative
17 care physicians, oncologists, and pain medicine specialists.

18 (D) Make recommendations for training, research and other
19 areas that are determined by the committee to have the potential to
20 reduce inappropriate use of prescription drugs in this state.

21 (b) Upon receipt of the committee's recommendations of
22 parameters for prescribing and dispensing specific to each
23 profession and subspecialty therewithin, each professional
24 licensing board shall adopt parameters for the profession and

1 subspecialties thereof and provide them to the board.

2 (c) The Board of Pharmacy is responsible for establishing the
3 advisory committee and providing administrative support. The
4 advisory committee shall elect a chair by majority vote. The board
5 shall promulgate rules with advice and consent of the advisory
6 committee, in accordance with the provisions of article three,
7 chapter twenty-nine-a of this code on or before June 1, 2012. The
8 legislative rules must include, but not be limited to, the
9 following matters: (1) Identifying parameters used in identifying
10 abnormal or unusual prescribing or dispensing patterns; (2)
11 processing parameters and developing reports of abnormal or unusual
12 prescribing or dispensing patterns for both patients and health
13 care professionals; and (3) establishing the information to be
14 contained in reports and the process by which the reports will be
15 generated and disseminated.

16 ~~(b)~~ (d) All practitioners, as that term is defined in section
17 one hundred-one, article two of this chapter who prescribe or
18 dispense Schedule II, III or IV controlled substances shall, on or
19 before July 1, 2011, have online or other form of electronic access
20 to the West Virginia Controlled Substances Monitoring Program
21 database;

22 ~~(c)~~ (e) Persons or entities with access to the West Virginia
23 Controlled Substances Monitoring Program database pursuant to this
24 section may, pursuant to rules promulgated by the Board of

1 Pharmacy, delegate appropriate personnel to have access to said
2 database;

3 ~~(d)~~ (f) Good faith reliance by a practitioner on information
4 contained in the West Virginia Controlled Substances Monitoring
5 Program database in prescribing or dispensing or refusing or
6 declining to prescribe or dispense a schedule II, III or IV
7 controlled substance shall constitute an absolute defense in any
8 civil or criminal action brought due to prescribing or dispensing
9 or refusing or declining to prescribe or dispense; and

10 ~~(e) The Board of Pharmacy is hereby authorized to promulgate~~
11 ~~an emergency rule under chapter twenty-nine-a to effectuate the~~
12 ~~amendments to this section enacted during the 2010 Regular Session~~
13 ~~of the Legislature.~~

14 (g) A prescribing practitioner may notify law enforcement of
15 a patient, who in the prescribing practitioner's judgment may be in
16 violation of section four hundred ten, article four, chapter sixty-
17 a of this code, based on information obtained and reviewed from the
18 controlled substances monitoring database. A prescribing
19 practitioner who makes a notification pursuant to this subsection
20 shall be immune from any civil, administrative or criminal
21 liability that otherwise might be incurred or imposed because of
22 such notification if such notification is made in good faith.

23 ~~(f)~~ (h) Nothing in the article shall be construed to require a
24 a practitioner to access the West Virginia Controlled Substances

1 Monitoring Program database.

2 (i) Unauthorized access or use or unauthorized disclosure of
3 the information in the database is a felony punishable by
4 incarceration in a state correctional facility for not less than
5 one year nor more than five years or fined not less than \$3,000 nor
6 more than \$10,000, or both.

7 (j) The Board of Pharmacy shall make every effort to update
8 the database to a real-time database as soon as a system is
9 available and when funding is available. The implementation of the
10 parameters to identify abnormal or unusual prescribing or
11 dispensing patterns or practices as established by this article
12 shall be contingent on available funding.

13 (k) The Board of Pharmacy shall provide an annual report on
14 the West Virginia Controlled Substance Monitoring Program to the
15 Legislative Oversight Commission on Health and Human Resources
16 Accountability with recommendations for needed legislation.

NOTE: The purpose of this bill is to permit specific law-enforcement officials access to certain confidential pharmaceutical information to identify unusual or abnormal prescription drug behavior.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.