

**H. B. 2975**

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(By Delegate Manypenny)  
[Introduced March 19, 2013; referred to the  
Committee on Health and Human Resources then the  
Judiciary.]

**FISCAL  
NOTE**

A Bill to amend and reenact §60A-9-5 of the Code of West Virginia,  
1931, as amended, relating to the controlled substances  
monitoring generally; permitting specific law-enforcement  
officials who are members of federally affiliated drug task  
forces, including sheriffs, access to certain confidential  
pharmaceutical information to identify unusual prescription  
drug behavior; and establishing a felony offense for misusing  
information from the controlled substance database.

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

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

**ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

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

1           (a) (1) The information required by this article to be kept by  
2 the State Board of Pharmacy is confidential and not subject to the  
3 provisions of chapter twenty-nine-b of this code or obtainable as  
4 discovery in civil matters absent a court order and is open to  
5 inspection only by inspectors and agents of the State Board of  
6 Pharmacy, members of the West Virginia State Police expressly  
7 authorized by the Superintendent of the West Virginia State Police  
8 to have access to the information, authorized agents of local  
9 law-enforcement agencies and deputy sheriffs as members of a  
10 federally affiliated drug task force, authorized agents of the  
11 federal Drug Enforcement Administration, duly authorized agents of  
12 the Bureau for Medical Services, duly authorized agents of the  
13 Office of the Chief Medical Examiner for use in post-mortem  
14 examinations, duly authorized agents of licensing boards of  
15 practitioners in this state and other states authorized to  
16 prescribe Schedules II, III and IV controlled substances,  
17 prescribing practitioners and pharmacists and persons with an  
18 enforceable court order or regulatory agency administrative  
19 subpoena: *Provided*, That all law-enforcement personnel who have  
20 access to the Controlled Substances Monitoring Program database  
21 shall be granted access in accordance with applicable state laws  
22 and Board of Pharmacy legislative rules, shall be certified as a  
23 West Virginia law-enforcement officer and shall have successfully  
24 completed United States Drug Enforcement Administration Diversion  
25 Training and National Association of Drug Diversion Investigation

1 Training. All information released by the State Board of Pharmacy  
2 must be related to a specific patient or a specific individual or  
3 entity under investigation by any of the above parties except that  
4 practitioners who prescribe or dispense controlled substances may  
5 request specific data related to their Drug Enforcement  
6 Administration controlled substance registration number or for the  
7 purpose of providing treatment to a patient: *Provided, however,*  
8 That the West Virginia Controlled Substances Monitoring Program  
9 Database Review Committee established in subsection (b) of this  
10 section is authorized to query the database to comply with said  
11 subsection.

12 (2) Subject to the provisions of subdivision (1) of this  
13 subsection, the board shall also review the West Virginia  
14 Controlled Substance Monitoring Program database and issue reports  
15 that identify abnormal or unusual practices of patients who exceed  
16 parameters as determined by the advisory committee established in  
17 this section. The board shall communicate with prescribers and  
18 dispensers to more effectively manage the medications of their  
19 patients in the manner recommended by the advisory committee. All  
20 other reports produced by the board shall be kept confidential.  
21 The board shall maintain the information required by this article  
22 for a period of not less than five years. Notwithstanding any  
23 other provisions of this code to the contrary, data obtained under  
24 the provisions of this article may be used for compilation of  
25 educational, scholarly or statistical purposes, and may be shared

1 with the West Virginia Department of Health and Human Resources for  
2 those purposes, as long as the identities of persons or entities  
3 and any personally identifiable information, including protected  
4 health information, contained therein shall be redacted, scrubbed  
5 or otherwise irreversibly destroyed in a manner that will preserve  
6 the confidential nature of the information. No individual or  
7 entity required to report under section four of this article may be  
8 subject to a claim for civil damages or other civil relief for the  
9 reporting of information to the Board of Pharmacy as required under  
10 and in accordance with the provisions of this article.

11 (3) The board shall establish an advisory committee to  
12 develop, implement and recommend parameters to be used in  
13 identifying abnormal or unusual usage patterns of patients in this  
14 state. This advisory committee shall:

15 (A) Consist of the following members: A physician licensed by  
16 the West Virginia Board of Medicine, a dentist licensed by the West  
17 Virginia Board of Dental Examiners, a physician licensed by the  
18 West Virginia Board of Osteopathy, a licensed physician certified  
19 by the American Board of Pain Medicine, a licensed physician board  
20 certified in medical oncology recommended by the West Virginia  
21 State Medical Association, a licensed physician board certified in  
22 palliative care recommended by the West Virginia Center on End of  
23 Life Care, a pharmacist licensed by the West Virginia Board of  
24 Pharmacy, a licensed physician member of the West Virginia Academy  
25 of Family Physicians, an expert in drug diversion and such other

1 members as determined by the board.

2 (B) Recommend parameters to identify abnormal or unusual usage  
3 patterns of controlled substances for patients in order to prepare  
4 reports as requested in accordance with subsection (a), subdivision  
5 (2) of this section.

6 (C) Make recommendations for training, research and other  
7 areas that are determined by the committee to have the potential to  
8 reduce inappropriate use of prescription drugs in this state,  
9 including, but not limited to, studying issues related to diversion  
10 of controlled substances used for the management of opioid  
11 addiction.

12 (D) Monitor the ability of medical services providers, health  
13 care facilities, pharmacists and pharmacies to meet the twenty-four  
14 hour reporting requirement for the Controlled Substances Monitoring  
15 Program set forth in section three of this article, and report on  
16 the feasibility of requiring real-time reporting.

17 (E) Establish outreach programs with local law enforcement to  
18 provide education to local law enforcement on the requirements and  
19 use of the Controlled Substances Monitoring Program database  
20 established in this article.

21 (b) The Board of Pharmacy shall create a West Virginia  
22 Controlled Substances Monitoring Program Database Review Committee  
23 of individuals consisting of two prosecuting attorneys from West  
24 Virginia counties, two physicians with specialties which require  
25 extensive use of controlled substances and a pharmacist who is

1 trained in the use and abuse of controlled substances. The review  
2 committee may determine that an additional physician who is an  
3 expert in the field under investigation be added to the team when  
4 the facts of a case indicate that the additional expertise is  
5 required. The review committee, working independently, may query  
6 the database based on parameters established by the advisory  
7 committee. The review committee may make determinations on a  
8 case-by-case basis on specific unusual prescribing or dispensing  
9 patterns indicated by outliers in the system or abnormal or unusual  
10 usage patterns of controlled substances by patients which the  
11 review committee has reasonable cause to believe necessitates  
12 further action by law enforcement or the licensing board having  
13 jurisdiction over the prescribers or dispensers under  
14 consideration. The review committee shall also review notices  
15 provided by the chief medical examiner pursuant to subsection (h),  
16 section ten, article twelve, chapter sixty-one of this code and  
17 determine on a case-by-case basis whether a practitioner who  
18 prescribed or dispensed a controlled substance resulting in or  
19 contributing to the drug overdose may have breached professional or  
20 occupational standards or committed a criminal act when prescribing  
21 the controlled substance at issue to the decedent. Only in those  
22 cases in which there is reasonable cause to believe a breach of  
23 professional or occupational standards or a criminal act may have  
24 occurred, the review committee shall notify the appropriate  
25 professional licensing agency having jurisdiction over the

1 applicable prescriber or dispenser and appropriate law-enforcement  
2 agencies and provide pertinent information from the database for  
3 their consideration. The number of cases identified shall be  
4 determined by the review committee based on a number that can be  
5 adequately reviewed by the review committee. The information  
6 obtained and developed may not be shared except as provided in this  
7 article and is not subject to the provisions of chapter twenty-  
8 nine-b of this code or obtainable as discovering in civil matters  
9 absent a court order.

10 (c) The Board of Pharmacy is responsible for establishing and  
11 providing administrative support for the advisory committee and the  
12 West Virginia Controlled Substances Monitoring Program Database  
13 Review Committee. The advisory committee and the review committee  
14 shall elect a chair by majority vote. Members of the advisory  
15 committee and the review committee may not be compensated in their  
16 capacity as members but shall be reimbursed for reasonable expenses  
17 incurred in the performance of their duties.

18 (d) The board shall promulgate rules with advice and consent  
19 of the advisory committee, in accordance with the provisions of  
20 article three, chapter twenty-nine-a of this code on or before June  
21 1, 2013. The legislative rules must include, but shall not be  
22 limited to, the following matters: (1) Identifying parameters used  
23 in identifying abnormal or unusual prescribing or dispensing  
24 patterns; (2) processing parameters and developing reports of  
25 abnormal or unusual prescribing or dispensing patterns for

1 patients, practitioners and dispensers; (3) establishing the  
2 information to be contained in reports and the process by which the  
3 reports will be generated and disseminated; and (4) setting up  
4 processes and procedures to ensure that the privacy,  
5 confidentiality, and security of information collected, recorded,  
6 transmitted and maintained by the review committee is not disclosed  
7 except as provided in this section.

8 (e) All practitioners, as that term is defined in section one  
9 hundred-one, article two of this chapter who prescribe or dispense  
10 schedule II, III or IV controlled substances shall, on or before  
11 July 1, 2011, have online or other form of electronic access to the  
12 West Virginia Controlled Substances Monitoring Program database;

13 (f) Persons or entities with access to the West Virginia  
14 Controlled Substances Monitoring Program database pursuant to this  
15 section may, pursuant to rules promulgated by the Board of  
16 Pharmacy, delegate appropriate personnel to have access to said  
17 database;

18 (g) Unauthorized access or use or unauthorized disclosure of  
19 the information in the database is a felony punishable by  
20 incarceration in a state correctional facility for not less than  
21 one year nor more than five years or fined not less than \$3,000 nor  
22 more than \$10,000, or both.

23 ~~(g)~~ (h) Good faith reliance by a practitioner on information  
24 contained in the West Virginia Controlled Substances Monitoring  
25 Program database in prescribing or dispensing or refusing or



1 declining to prescribe or dispense a schedule II, III or IV  
2 controlled substance shall constitute an absolute defense in any  
3 civil or criminal action brought due to prescribing or dispensing  
4 or refusing or declining to prescribe or dispense; and

5 ~~(h)~~ (i) A prescribing or dispensing practitioner may notify  
6 law enforcement of a patient who, in the prescribing or dispensing  
7 practitioner's judgment, may be in violation of section four  
8 hundred ten, article four of this chapter, based on information  
9 obtained and reviewed from the controlled substances monitoring  
10 database. A prescribing or dispensing practitioner who makes a  
11 notification pursuant to this subsection is immune from any civil,  
12 administrative or criminal liability that otherwise might be  
13 incurred or imposed because of the notification if the notification  
14 is made in good faith.

15 ~~(i)~~ (j) Nothing in the article may be construed to require a  
16 practitioner to access the West Virginia Controlled Substances  
17 Monitoring Program database except as provided in section five-a of  
18 this article.

19 (k) The Board of Pharmacy shall provide an annual report on  
20 the West Virginia Controlled Substance Monitoring Program to the  
21 Legislative Oversight Commission on Health and Human Resources  
22 Accountability with recommendations for needed legislation no later  
23 than January 1 of each year.

NOTE: The purpose of this bill is to permit specific law-

enforcement officials, including sheriffs, access to certain confidential pharmaceutical information to identify unusual or abnormal prescription drug behavior and to establish a felony offense for misusing information from the controlled substance database.

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