

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Committee Substitute**

**for**

**Senate Bill 454**

BY SENATOR KESSLER

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on the Judiciary;

reported on February 28, 2016]



1 A BILL to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended; to amend  
2 said code by adding thereto a new article, designated §16-5Y-1, §16-5Y-2, §16-5Y-3, §16-  
3 5Y-4, §16-5Y-5, §16-5Y-6, §16-5Y-7, §16-5Y-8, §16-5Y-9, §16-5Y-10, §16-5Y-11, §16-  
4 5Y-12 and §16-5Y-13; and to amend and reenact §60A-9-4, §60A-9-5, §60A-9-5a, §60A-  
5 9-7 and §60A-9-8 of said code, all relating to licensing and regulation of medication-  
6 assisted treatment programs for substance use disorders; repealing regulation of opioid  
7 treatment programs; setting out purpose; providing definitions; creating licenses for opioid  
8 treatment programs; creating categories of licenses; setting out licensing requirements;  
9 providing for registration of office-based medication-assisted programs; providing for  
10 application, fees and inspections of office-based medication-assisted programs; setting  
11 operational requirements for medication-assisted treatment programs; providing for a  
12 program sponsor and medical director; setting forth staffing requirements; providing for  
13 regulation and oversight by Office of Health Facility Licensure and Certification;  
14 designating necessity for a medical director and prescribing minimum training and  
15 performance requirements; allowing enrollment as a Medicaid provider; providing billing  
16 requirements; setting forth minimum certification requirements; mandating state and  
17 federal criminal background checks; designating who may prescribe and dispense  
18 medication-assisted treatment medications; setting certain minimum practice standards  
19 and patient treatment standards for any medication-assisted treatment program  
20 prescribing or dispensing medication-assisted treatment medications; requiring review of  
21 the West Virginia Controlled Substances Monitoring Program database for each patient at  
22 least quarterly; setting compliance requirements for a medication-assisted treatment  
23 program; providing for patient protocols, treatment plans and profiles; allowing liquid  
24 methadone to be prescribed and dispensed only as allowed by legislative rule; setting  
25 notification requirements of operation changes; restricting location of medication-assisted  
26 treatment programs; allowing for waivers and variances from certification or licensure

27 standards; permitting inspection warrants; providing for an administrative review and  
28 appeal process; allowing civil monetary penalties; designating license limitations for  
29 deviation for accepted practice or patient treatment standards; permitting the secretary to  
30 promulgate rules, including emergency rules; providing advertisement requirements;  
31 creating moratorium on new opioid treatment programs; establishing state authority and  
32 state oversight authority for medication-assisted treatment programs; mandating data  
33 collection; granting Office of Health Facility Licensure and Certification access to the West  
34 Virginia Controlled Substances Monitoring Program database for use in certification,  
35 licensure and regulation of health facilities; requiring reporting when an opioid antagonist  
36 is dispensed by certain persons; clarifying statutory language related to seventy-two hour  
37 prescriptions; prohibiting licensing boards from issuing or reissuing licenses to  
38 practitioners who have not registered for the West Virginia Controlled Substances  
39 Monitoring Program database; establishing a civil penalty for failure to register for the West  
40 Virginia Controlled Substances Monitoring Program database; establishing a civil penalty  
41 for failure to access the West Virginia Controlled Substances Monitoring Program as  
42 mandated by the code; providing exceptions to penalties; clarifying language related to  
43 the Fight Substance Abuse Fund; placing administrative authority over the Fight  
44 Substance Abuse Fund with the Bureau for Public Health; revising statutory language to  
45 use defined terms; and reorganizing existing language.

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

1 That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that said code be amended by adding thereto a new article designated §16-5Y-1, §16-  
3 5Y-2, §16-5Y-3, §16-5Y-4, §16-5Y-5, §16-5Y-6, §16-5Y-7, §16-5Y-8, §16-5Y-9, §16-5Y-10, §16-  
4 5Y-11, §16-5Y-12 and §16-5Y-13; and that §60A-9-4, §60A-9-5, §60A-9-5a, §60A-9-7 and §60A-  
5 9-8 of said code be amended and reenacted, all to read as follows:

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

#### §16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose rules in accordance with the provisions of article three,  
2 chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of  
3 this chapter. The secretary may appoint or designate advisory councils of professionals in the  
4 areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental  
5 health and intellectual disability centers and any other areas necessary to advise the secretary  
6 on rules.

7 (b) The rules may include, but are not limited to, the regulation of:

8 (1) Land usage endangering the public health: *Provided*, That no rules may be  
9 promulgated or enforced restricting the subdivision or development of any parcel of land within  
10 which the individual tracts, lots or parcels exceed two acres each in total surface area and which  
11 individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet  
12 even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total  
13 surface area, and which tracts are sold, leased or utilized only as single-family dwelling units.  
14 Notwithstanding the provisions of this subsection, nothing in this section may be construed to  
15 abate the authority of the department to:

16 (A) Restrict the subdivision or development of a tract for any more intense or higher density  
17 occupancy than a single-family dwelling unit;

18 (B) Propose or enforce rules applicable to single-family dwelling units for single-family  
19 dwelling unit sanitary sewerage disposal systems; or

20 (C) Restrict any subdivision or development which might endanger the public health, the  
21 sanitary condition of streams or sources of water supply;

22 (2) The sanitary condition of all institutions and schools, whether public or private, public  
23 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open

24 to the general public and inviting public patronage or public assembly, or tendering to the public  
25 any item for human consumption and places where trades or industries are conducted;

26 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources  
27 of water supply, sewerage facilities and plumbing systems and the qualifications of personnel  
28 connected with any of those facilities, without regard to whether the supplies or systems are  
29 publicly or privately owned; and the design of all water systems, plumbing systems, sewerage  
30 systems, sewage treatment plants, excreta disposal methods and swimming pools in this state,  
31 whether publicly or privately owned;

32 (4) Safe drinking water, including:

33 (A) The maximum contaminant levels to which all public water systems must conform in  
34 order to prevent adverse effects on the health of individuals and, if appropriate, treatment  
35 techniques that reduce the contaminant or contaminants to a level which will not adversely affect  
36 the health of the consumer. The rule shall contain provisions to protect and prevent contamination  
37 of wellheads and well fields used by public water supplies so that contaminants do not reach a  
38 level that would adversely affect the health of the consumer;

39 (B) The minimum requirements for: Sampling and testing; system operation; public  
40 notification by a public water system on being granted a variance or exemption or upon failure to  
41 comply with specific requirements of this section and rules promulgated under this section; record  
42 keeping; laboratory certification; as well as procedures and conditions for granting variances and  
43 exemptions to public water systems from state public water systems rules; and

44 (C) The requirements covering the production and distribution of bottled drinking water  
45 and may establish requirements governing the taste, odor, appearance and other consumer  
46 acceptability parameters of drinking water;

47 (5) Food and drug standards, including cleanliness, proscription of additives, proscription  
48 of sale and other requirements in accordance with article seven of this chapter as are necessary  
49 to protect the health of the citizens of this state;

50 (6) The training and examination requirements for emergency medical service attendants  
51 and emergency medical care technician-paramedics; the designation of the health care facilities,  
52 health care services and the industries and occupations in the state that must have emergency  
53 medical service attendants and emergency medical care technician-paramedics employed and  
54 the availability, communications and equipment requirements with respect to emergency medical  
55 service attendants and to emergency medical care technician-paramedics. Any regulation of  
56 emergency medical service attendants and emergency medical care technician- paramedics may  
57 not exceed the provisions of article four-c of this chapter;

58 (7) The health and sanitary conditions of establishments commonly referred to as bed and  
59 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment  
60 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may  
61 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer  
62 rooms to install a restaurant-style or commercial food service facility. The secretary may not  
63 require an owner of a bed and breakfast providing sleeping accommodations of more than six  
64 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast  
65 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

66 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,  
67 laboratory service fees, environmental health service fees, health facility fees and permit fees;

68 (9) The collection of data on health status, the health system and the costs of health care;

69 ~~(10) Opioid treatment programs duly licensed and operating under the requirements of~~  
70 ~~chapter twenty-seven of this code.~~

71 ~~(A) The Health Care Authority shall develop new certificate of need standards, pursuant~~  
72 ~~to the provisions of article two-d of this chapter, that are specific for opioid treatment program~~  
73 ~~facilities.~~

74 ~~(B) No applications for a certificate of need for opioid treatment programs may be~~  
75 ~~approved by the Health Care Authority as of the effective date of the 2007 amendments to this~~  
76 ~~subsection.~~

77 ~~(C) There is a moratorium on the licensure of new opioid treatment programs that do not~~  
78 ~~have a certificate of need as of the effective date of the 2007 amendments to this subsection,~~  
79 ~~which shall continue until the Legislature determines that there is a necessity for additional opioid~~  
80 ~~treatment facilities in West Virginia.~~

81 ~~(D) The secretary shall file revised emergency rules with the Secretary of State to regulate~~  
82 ~~opioid treatment programs in compliance with the provisions of this section. Any opioid treatment~~  
83 ~~program facility that has received a certificate of need pursuant to article two-d, of this chapter by~~  
84 ~~the Health Care Authority shall be permitted to proceed to license and operate the facility.~~

85 ~~(E) All existing opioid treatment programs shall be subject to monitoring by the secretary.~~  
86 ~~All staff working or volunteering at opioid treatment programs shall complete the minimum~~  
87 ~~education, reporting and safety training criteria established by the secretary. All existing opioid~~  
88 ~~treatment programs shall be in compliance within one hundred eighty days of the effective date~~  
89 ~~of the revised emergency rules as required herein. The revised emergency rules shall provide at~~  
90 ~~a minimum:~~

91 ~~(i) That the initial assessment prior to admission for entry into the opioid treatment program~~  
92 ~~shall include an initial drug test to determine whether an individual is either opioid addicted or~~  
93 ~~presently receiving methadone for an opioid addiction from another opioid treatment program.~~

94 ~~(ii) The patient may be admitted to the opioid treatment program if there is a positive test~~  
95 ~~for either opioids or methadone or there are objective symptoms of withdrawal, or both, and all~~  
96 ~~other criteria set forth in the rule for admission into an opioid treatment program are met.~~  
97 ~~Admission to the program may be allowed to the following groups with a high risk of relapse~~  
98 ~~without the necessity of a positive test or the presence of objective symptoms: Pregnant women~~  
99 ~~with a history of opioid abuse, prisoners or parolees recently released from correctional facilities,~~  
100 ~~former clinic patients who have successfully completed treatment but who believe themselves to~~  
101 ~~be at risk of imminent relapse and HIV patients with a history of intravenous drug use.~~

102 ~~(iii) That within seven days of the admission of a patient, the opioid treatment program~~  
103 ~~shall complete an initial assessment and an initial plan of care.~~

104 ~~(iv) That within thirty days after admission of a patient, the opioid treatment program shall~~  
105 ~~develop an individualized treatment plan of care and attach the plan to the patient's chart no later~~  
106 ~~than five days after the plan is developed. The opioid treatment program shall follow guidelines~~  
107 ~~established by a nationally recognized authority approved by the secretary and include a recovery~~  
108 ~~model in the individualized treatment plan of care. The treatment plan is to reflect that~~  
109 ~~detoxification is an option for treatment and supported by the program; that under the~~  
110 ~~detoxification protocol the strength of maintenance doses of methadone should decrease over~~  
111 ~~time, the treatment should be limited to a defined period of time, and participants are required to~~  
112 ~~work toward a drug-free lifestyle.~~

113 ~~(v) That each opioid treatment program shall report and provide statistics to the~~  
114 ~~Department of Health and Human Resources at least semiannually which includes the total~~  
115 ~~number of patients; the number of patients who have been continually receiving methadone~~  
116 ~~treatment in excess of two years, including the total number of months of treatment for each such~~  
117 ~~patient; the state residency of each patient; the number of patients discharged from the program,~~  
118 ~~including the total months in the treatment program prior to discharge and whether the discharge~~  
119 ~~was for:~~

120 ~~(A) Termination or disqualification;~~

121 ~~(B) Completion of a program of detoxification;~~

122 ~~(C) Voluntary withdrawal prior to completion of all requirements of detoxification as~~  
123 ~~determined by the opioid treatment program;~~

124 ~~(D) Successful completion of the individualized treatment care plan; or~~

125 ~~(E) An unexplained reason.~~

126 ~~(vi) That random drug testing of all patients shall be conducted during the course of~~  
127 ~~treatment at least monthly. For purposes of these rules, "random drug testing" means that each~~

128 ~~patient of an opioid treatment program facility has a statistically equal chance of being selected~~  
129 ~~for testing at random and at unscheduled times. Any refusal to participate in a random drug test~~  
130 ~~shall be considered a positive test. Nothing contained in this section or the legislative rules~~  
131 ~~promulgated in conformity herewith will preclude any opioid treatment program from administering~~  
132 ~~such additional drug tests as determined necessary by the opioid treatment program.~~

133 ~~(vii) That all random drug tests conducted by an opioid treatment program shall, at a~~  
134 ~~minimum, test for the following:~~

135 ~~(A) Opiates, including oxycodone at common levels of dosing; (B) Methadone and any~~  
136 ~~other medication used by the program as an intervention;~~

137 ~~(C) Benzodiazepine including diazepam, lorazepam, clonazepam and alprazolam;~~

138 ~~(D) Cocaine;~~

139 ~~(E) Methamphetamine or amphetamine;~~

140 ~~(F) Tetrahydrocannabinol, delta-9 tetrahydrocannabinol or dronabinol or other similar~~  
141 ~~substances; or~~

142 ~~(G) Other drugs determined by community standards, regional variation or clinical~~  
143 ~~indication.~~

144 ~~(viii) That a positive drug test is a test that results in the presence of any drug or substance~~  
145 ~~listed in this schedule and any other drug or substance prohibited by the opioid treatment program.~~

146 ~~A positive drug test result after the first six months in an opioid treatment program shall result in~~  
147 ~~the following:~~

148 ~~(A) Upon the first positive drug test result, the opioid treatment program shall:~~

149 ~~(1) Provide mandatory and documented weekly counseling of no less than thirty minutes~~  
150 ~~to the patient, which shall include weekly meetings with a counselor who is licensed, certified or~~  
151 ~~enrolled in the process of obtaining licensure or certification in compliance with the rules and on~~  
152 ~~staff at the opioid treatment program;~~

153 ~~(2) Immediately revoke the take-home methadone privilege for a minimum of thirty days;~~

154 and

155 ~~(B) Upon a second positive drug test result within six months of a previous positive drug~~  
156 ~~test result, the opioid treatment program shall:~~

157 ~~(1) Provide mandatory and documented weekly counseling of no less than thirty minutes,~~  
158 ~~which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the~~  
159 ~~process of obtaining licensure or certification in compliance with the rules and on staff at the opioid~~  
160 ~~treatment program;~~

161 ~~(2) Immediately revoke the take-home methadone privilege for a minimum of sixty days;~~

162 and

163 ~~(3) Provide mandatory documented treatment team meetings with the patient.~~

164 ~~(C) Upon a third positive drug test result within a period of six months the opioid treatment~~  
165 ~~program shall:~~

166 ~~(1) Provide mandatory and documented weekly counseling of no less than thirty minutes,~~  
167 ~~which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the~~  
168 ~~process of obtaining licensure or certification in compliance with the rules and on staff at the opioid~~  
169 ~~treatment program;~~

170 ~~(2) Immediately revoke the take-home methadone privilege for a minimum of one hundred~~  
171 ~~twenty days; and~~

172 ~~(3) Provide mandatory and documented treatment team meetings with the patient which~~  
173 ~~will include, at a minimum: The need for continuing treatment; a discussion of other treatment~~  
174 ~~alternatives; and the execution of a contract with the patient advising the patient of discharge for~~  
175 ~~continued positive drug tests.~~

176 ~~(D) Upon a fourth positive drug test within a six-month period, the patient shall be~~  
177 ~~immediately discharged from the opioid treatment program or, at the option of the patient, shall~~  
178 ~~immediately be provided the opportunity to participate in a twenty-one day detoxification plan;~~

179 followed by immediate discharge from the opioid treatment program: *Provided*, That testing  
180 positive solely for tetrahydrocannabinol, delta-9 tetrahydrocannabinol or dronabinol or similar  
181 substances shall not serve as a basis for discharge from the program.

182 (ix) That the opioid treatment program must report and provide statistics to the Department  
183 of Health and Human Resources demonstrating compliance with the random drug test rules,  
184 including:

185 (A) Confirmation that the random drug tests were truly random in regard to both the  
186 patients tested and to the times random drug tests were administered by lottery or some other  
187 objective standard so as not to prejudice or protect any particular patient;

188 (B) Confirmation that the random drug tests were performed at least monthly for all  
189 program participants;

190 (C) The total number and the number of positive results; and

191 (D) The number of expulsions from the program.

192 (x) That all opioid treatment facilities be open for business seven days per week; however,  
193 the opioid treatment center may be closed for eight holidays and two training days per year. During  
194 all operating hours, every opioid treatment program shall have a health care professional as  
195 defined by rule promulgated by the secretary actively licensed in this state present and on duty at  
196 the treatment center and a physician actively licensed in this state available for consultation.

197 (xi) That the Office of Health Facility Licensure and Certification develop policies and  
198 procedures in conjunction with the Board of Pharmacy that will allow physicians treating patients  
199 through an opioid treatment program access to the Controlled Substances Monitoring Program  
200 database maintained by the Board of Pharmacy at the patient's intake, before administration of  
201 methadone or other treatment in an opioid treatment program, after the initial thirty days of  
202 treatment, prior to any take-home medication being granted, after any positive drug test, and at  
203 each ninety-day treatment review to ensure the patient is not seeking prescription medication

204 ~~from multiple sources. The results obtained from the Controlled Substances Monitoring Program~~  
205 ~~database shall be maintained with the patient records.~~

206 ~~(xii) That each opioid treatment program shall establish a peer review committee, with at~~  
207 ~~least one physician member, to review whether the program is following guidelines established~~  
208 ~~by a nationally recognized authority approved by the secretary. The secretary shall prescribe the~~  
209 ~~procedure for evaluation by the peer review. Each opioid treatment program shall submit a report~~  
210 ~~of the peer review results to the secretary on a quarterly basis.~~

211 ~~(xiii) (c)~~ The secretary shall propose a rule for legislative approval in accordance with the  
212 provisions of article three, chapter twenty-nine-a of this code for the distribution of state aid to  
213 local health departments and basic public health services funds.

214 The rule shall include the following provisions:

215 Base allocation amount for each county;

216 Establishment and administration of an emergency fund of no more than two percent of  
217 the total annual funds of which unused amounts are to be distributed back to local boards of health  
218 at the end of each fiscal year;

219 A calculation of funds utilized for state support of local health departments;

220 Distribution of remaining funds on a per capita weighted population approach which  
221 factors coefficients for poverty, health status, population density and health department  
222 interventions for each county and a coefficient which encourages counties to merge in the  
223 provision of public health services;

224 A hold-harmless provision to provide that each local health department receives no less  
225 in state support for a period of four years beginning in the 2009 budget year.

226 The Legislature finds that an emergency exists and, therefore, the secretary shall file an  
227 emergency rule to implement the provisions of this section pursuant to the provisions of section  
228 fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is subject to the prior

229 approval of the Legislative Oversight Commission on Health and Human Resources  
230 Accountability prior to filing with the Secretary of State.

231 ~~(xiv)~~ (d) The secretary may propose rules for legislative approval that may include the  
232 regulation of other ~~Other~~ health-related matters which the department is authorized to supervise  
233 and for which the rule-making authority has not been otherwise assigned.

**ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.**

**§16-5Y-1. Purpose.**

1 The purpose of this act is to establish licensing and registration requirements for facilities  
2 and physicians that treat patients with substance use disorders to ensure that patients may be  
3 lawfully treated by the use of medication and drug screens, in combination with counseling and  
4 behavioral therapies, to provide a holistic approach to the treatment of substance use disorders  
5 and comply with oversight requirements developed by the Department of Health and Human  
6 Resources. The Legislature recognizes the problem of substance use disorders in West Virginia  
7 and the need for quality, safe treatment of substance use disorders to adequately protect the  
8 people of West Virginia.

**§ 16-5Y-2. Definitions.**

1 (a) "Addiction" means a primary, chronic disease of brain reward, motivation, memory  
2 and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological,  
3 social and spiritual manifestations, which is reflected in an individual pathologically pursuing  
4 reward or relief by substance use, or both, and other behaviors. Addiction is characterized by  
5 inability to consistently abstain; impairment in behavioral control; craving; diminished recognition  
6 of significant problems with one's behaviors; interpersonal problems with one's behaviors and  
7 interpersonal relationships; a dysfunctional emotional response; and as addiction is currently  
8 defined by the American Society of Addiction Medicine.

9 (b) "Administrator" means an individual designated by the governing body to be  
10 responsible for the day-to-day operation of the opioid treatment programs.

11 (c) “Advanced alcohol and drug abuse counselor” means an alcohol and drug abuse  
12 counselor who is certified by the West Virginia Certification Board for Addiction and Prevention  
13 Professionals who demonstrates a high degree of competence in the addiction counseling field.

14 (d) “Alcohol and drug abuse counselor” means a counselor certified by the West Virginia  
15 Certification Board for Addiction and Prevention Professionals for specialized work with patients  
16 who have substance use problems.

17 (e) “Biopsychosocial” means of, relating to, or concerned with, biological, psychological  
18 and social aspects in contrast to the strictly biomedical aspects of disease.

19 (f) “Center for Substance Abuse Treatment” means the center under the Substance Abuse  
20 and Mental Health Services Administration that promotes community-based substance abuse  
21 treatment and recovery services for individuals and families in the community and provides  
22 national leadership to improve access, reduce barriers and promote high quality, effective  
23 treatment and recovery services.

24 (g) “Controlled Substances Monitoring Program database” means the database  
25 maintained by the West Virginia Board of Pharmacy pursuant to section three, article nine, chapter  
26 sixty-a of this code that monitors and tracks certain prescriptions written or dispensed by  
27 dispensers and prescribers in West Virginia.

28 (h) “Director” means the Director of the Office of Health Facility Licensure and Certification.

29 (i) “Dispense” means the preparation and delivery of a medication-assisted treatment  
30 medication in an appropriately labeled and suitable container to a patient by a medication-assisted  
31 treatment program or pharmacist.

32 (j) “Governing body” means the person or persons identified as being legally responsible  
33 for the operation of the opioid treatment program. A governing body may be a board, a single  
34 entity or owner, or a partnership. The governing body must comply with the requirements  
35 prescribed in rules promulgated pursuant to this article.

36 (k) "Medical director" means a physician licensed within the State of West Virginia who  
37 assumes responsibility for administering all medical services performed by the medication-  
38 assisted treatment program, either by performing them directly or by delegating specific  
39 responsibility to authorized program physicians and health care professionals functioning under  
40 the medical director's direct supervision and functioning within their scope of practice.

41 (l) "Medication-assisted treatment" means the use of medications and drug screens, in  
42 combination with counseling and behavioral therapies, to provide a holistic approach to the  
43 treatment of substance use disorders.

44 (m) "Medication-assisted treatment program" means all publicly and privately owned  
45 opioid treatment programs and office based medication-assisted treatment programs, which  
46 prescribe medication-assisted treatment medications and treat substance use disorders, as those  
47 terms are defined in this article.

48 (n) "Medication-assisted treatment medication" means any medication that is approved by  
49 the United States Food and Drug Administration under section 505 of the Federal Food, Drug and  
50 Cosmetic Act, 21 U. S. C. §355, for use in the treatment of substance use disorders that is an  
51 opioid agonist and is listed on the schedule of controlled substances in article two, chapter sixty-  
52 a of this code.

53 (o) "Office based medication-assisted treatment" means all publicly or privately owned  
54 medication-assisted treatment programs in clinics, facilities, offices or programs that treat  
55 individuals with substance use disorders through the prescription, administration or dispensing of  
56 a medication-assisted treatment medication in the form of a partial opioid agonist or other  
57 medication-assisted medication approved for use in office based medication-assisted treatment  
58 setting.

59 (p) "Opioid agonist" means substances that bind to and activate the opiate receptors  
60 resulting in analgesia and pain regulation, respiratory depression and a wide variety of behavioral

61 changes. As used in this article, the term “opioid agonist” does not include partial agonist  
62 medications used as an alternative to opioid agonists in the treatment of opioid addiction.

63 (q) “Opioid treatment program” means all publicly or privately owned medication-assisted  
64 treatment programs in clinics, facilities, offices or programs that treat individuals with substance  
65 use disorders through on-site administration or dispensing of a medication-assisted treatment  
66 medication in the form of an opioid agonist or partial opioid agonist.

67 (r) “Owner” means any person, partnership, association or corporation listed as the owner  
68 of a medication-assisted treatment program on the licensing or registration forms required by this  
69 article.

70 (s) “Partial opioid agonist” means a Federal Drug Administration approved medication that  
71 is used as an alternative to opioid agonists for the treatment of substance use disorders and that  
72 binds to and activates opiate receptors, but not to the same degree as full agonists.

73 (t) “Physician” means an individual licensed in this state to practice allopathic medicine or  
74 surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West  
75 Virginia Board of Osteopathic Medicine and that meets the requirements of this article.

76 (u) “Prescriber” means a person authorized in this state, working within their scope of  
77 practice, to give direction, either orally or in writing, for the preparation and administration of a  
78 remedy to be used in the treatment of substance use disorders.

79 (v) “Program sponsor” means the person named in the application for the certification and  
80 licensure of a opioid treatment program who is responsible for the administrative operation of the  
81 opioid treatment program, and who assumes responsibility for all of its employees, including any  
82 practitioners, agents or other persons providing medical, rehabilitative or counseling services at  
83 the program.

84 (w) “Secretary” means the Secretary of the West Virginia Department of Health and  
85 Human Resources or his or her designee.

86 (x) “State opioid treatment authority” means the agency or individual designated by the  
87 Governor to exercise the responsibility and authority of the state for governing the treatment of  
88 substance use disorders, including, but not limited to, the treatment of opiate addiction with opioid  
89 drugs.

90 (y) “State oversight agency” means the agency or office of state government identified by  
91 the secretary to provide regulatory oversight of medication-assisted treatment programs on behalf  
92 of the State of West Virginia.

93 (z) “Substance” means the following:

94 (1) Alcohol;

95 (2) Controlled substances defined by section two hundred four, article two, chapter sixty-  
96 a; section two hundred six, article two, chapter sixty-a; section two hundred eight, article two,  
97 chapter sixty-a and section two hundred ten, article two, chapter sixty-a of this code; or

98 (3) Any chemical, gas, drug or medication consumed which causes clinically and  
99 functionally significant impairment, such as health problems, disability and failure to meet major  
100 responsibilities at work, school or home.

101 (aa) “Substance Abuse and Mental Health Services Administration” means the agency  
102 under the United States Department of Health and Human Services responsible for the  
103 accreditation and certification of medication-assisted treatment programs and that provides  
104 leadership, resources, programs, policies, information, data, contracts and grants for the purpose  
105 of reducing the impact of substance abuse and mental or behavioral illness.

106 (bb) “Substance use disorder” means patterns of symptoms resulting from use of a  
107 substance that the individual continues to take, despite experiencing problems as a result; or as  
108 defined in the most recent edition of the American Psychiatric Association’s Diagnostic and  
109 Statistical Manual of Mental Disorders.

110 (cc) “Variance” means written permission granted by the secretary to a medication-  
111 assisted treatment program that a requirement of this article or rules promulgated pursuant to this

112 article may be accomplished in a manner different from the manner set forth in this article or  
113 associated rules.

114 (dd) "Waiver" means a formal, time-limited agreement between the designated oversight  
115 agency and the medication-assisted treatment program that suspends a rule, policy or standard  
116 for a specific situation so long as the health and safety of patients is better served in the situation  
117 by suspension of the rule, policy or standard than by enforcement.

**§16-5Y-3. Opioid treatment programs to obtain license; application; fees and inspections.**

1 (a) No person, partnership, association or corporation may operate an opioid treatment  
2 program without first obtaining a license from the secretary in accordance with the provisions of  
3 this article and the rules lawfully promulgated pursuant to this article.

4 (b) Any person, partnership, association or corporation desiring a license to operate an  
5 opioid treatment program in this state shall file with the Office of Health Facility Licensure and  
6 Certification an application in such form and with such information as the secretary shall prescribe  
7 and furnish accompanied by an application fee.

8 (c) The Director of the Office of Health Facility Licensure and Certification or his or her  
9 designee shall inspect each facility and review all documentation submitted with the application.  
10 The director shall then provide a recommendation to the secretary whether to approve or deny  
11 the application for a license. The secretary shall issue a license if the facility is in compliance with  
12 the provisions of this article and with the rules lawfully promulgated pursuant to this article.

13 (d) A license shall be issued in one of three categories:

14 (1) An initial twelve month license shall be issued to an opioid treatment program  
15 establishing a new program or service for which there is insufficient consumer participation to  
16 demonstrate substantial compliance with this article and with all rules promulgated pursuant to  
17 this article;

18 (2) A provisional license shall be issued when an opioid treatment program seeks a  
19 renewal license, or is an existing program as of the effective date of this article and is seeking an

20 initial license, and the opioid treatment program is not in substantial compliance with this article  
21 and with all rules promulgated pursuant to this article, but does not pose a significant risk to the  
22 rights, health and safety of a consumer. It shall expire not more than six months from the date of  
23 issuance, and may not be consecutively reissued; or

24 (3) A renewal license shall be issued when an opioid treatment program is in substantial  
25 compliance with this article and with all rules promulgated pursuant to this article. A renewal  
26 license shall expire not more than one year from the date of issuance.

27 (e) At least sixty days prior to the license expiration date, an application for renewal shall  
28 be submitted by the opioid treatment program to the secretary on forms furnished by the secretary.  
29 A license shall be renewed if the secretary determines that the applicant is in compliance with this  
30 article and with all rules promulgated pursuant to this article. A license issued to one program  
31 location pursuant to this article is not transferrable or assignable. Any change of ownership of a  
32 licensed medication-assisted treatment program requires submission of a new application. The  
33 medication-assisted treatment program shall notify the secretary of any change in ownership  
34 within ten days of the change and must submit a new application within the time frame prescribed  
35 by the secretary.

36 (f) Any person, partnership, association or corporation that seeks to obtain or renew a  
37 license for an opioid treatment program in this state must submit to the secretary the following  
38 documentation:

- 39 (1) Full operating name of the program as advertised;  
40 (2) Legal name of the program as registered with the West Virginia Secretary of State;  
41 (3) Physical address of the program;  
42 (4) Preferred mailing address for the program;  
43 (5) Email address to be used as the primary contact for the program;  
44 (6) Federal Employer Identification Number assigned to the program;

45 (7) All business licenses issued to the program by this state, the state Tax Department,  
46 the Secretary of State and all other applicable business entities;

47 (8) Brief description of all services provided by the program;

48 (9) Hours of operation;

49 (10) Legal Registered Owner Name – name of the person registered as the legal owner  
50 of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal  
51 owner separately, indicating the percentage of ownership;

52 (11) Medical director's full name, medical license number, Drug Enforcement  
53 Administration registration number, and a list of all current certifications;

54 (12) For each employee of the program, provide the following:

55 (A) Employee's role and occupation within the program;

56 (B) Full legal name;

57 (C) Medical license, if applicable;

58 (D) Drug Enforcement Administration registration number, if applicable;

59 (E) Drug Enforcement Administration identification number to prescribe buprenorphine  
60 for addiction, if applicable; and

61 (F) Number of hours per week worked at program;

62 (13) Name and location address of all programs owned or operated by the applicant;

63 (14) Notarized signature of applicant;

64 (15) Check or money order for licensing fee and inspection fee;

65 (16) Verification of education and training for all physicians, counselors and social workers  
66 practicing at or used by referral by the program such as fellowships, additional education,  
67 accreditations, board certifications and other certifications;

68 (17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber  
69 practicing at the program for the three months preceding the date of application; and

70 (18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the  
71 West Virginia Health Care Authority.

72 (g) Upon satisfaction that an applicant has met all of the requirements of this article, the  
73 secretary shall issue a license to operate an opioid treatment program. An entity that obtains this  
74 license may possess, have custody or control of, and dispense drugs indicated and approved by  
75 the United States Food and Drug Administration for the treatment of substance use disorders.

76 (h) The opioid treatment program shall display the current license in a prominent location  
77 where services are provided and in clear view of all patients.

78 (i) The secretary or his or her designee shall inspect on a periodic basis all opioid  
79 treatment programs that are subject to this article and all rules adopted pursuant to this article to  
80 ensure continued compliance.

81 (j) Any license in effect at the time of the passage of this section in the 2016 regular  
82 session of the Legislature shall remain in effect until such time as new legislative rules  
83 promulgated pursuant to this article become effective. Upon the effective date of the new rules  
84 any licensee shall file for a new license within six months pursuant to the licensing procedures  
85 and requirements of this section and the new rules promulgated hereunder. The existing license  
86 shall remain effective until receipt of the new license.

**§16-5Y-4. Office based medication-assisted treatment programs to obtain registration;**  
**application; fees and inspections.**

1 (a) No person, partnership, association or corporation may operate an office based  
2 medication-assisted treatment program without first obtaining a registration from the secretary in  
3 accordance with the provisions of this article and the rules lawfully promulgated pursuant to this  
4 article.

5 (b) Any person, partnership, association or corporation desiring a registration to operate  
6 an office based medication-assisted treatment program in this state shall file with the Office of

7 Health Facility Licensure and Certification an application in such form and with such information  
8 as the secretary shall prescribe and furnish accompanied by an application fee.

9 (c) The Director of the Office of Health Facility Licensure and Certification or his or her  
10 designee shall inspect and review all documentation submitted with the application. The director  
11 shall then provide a recommendation to the secretary whether to approve or deny the application  
12 for registration. The secretary shall issue a registration if the facility is in compliance with the  
13 provisions of this article and with the rules lawfully promulgated pursuant to this article.

14 (d) A registration shall be issued in one of three categories:

15 (1) An initial twelve month registration shall be issued to an office based medication-  
16 assisted treatment program establishing a new program or service for which there is insufficient  
17 consumer participation to demonstrate substantial compliance with this article and with all rules  
18 promulgated pursuant to this article;

19 (2) A provisional registration shall be issued when an office based medication-assisted  
20 treatment program seeks a renewal registration, or is an existing program as of the effective date  
21 of this article and is seeking an initial registration, and the office based medication-assisted  
22 treatment program is not in substantial compliance with this article and with all rules promulgated  
23 pursuant to this article, but does not pose a significant risk to the rights, health and safety of a  
24 consumer. It shall expire not more than six months from the date of issuance, and may not be  
25 consecutively reissued; or

26 (3) A renewal registration shall be issued when an office based medication-assisted  
27 treatment program is in substantial compliance with this article and with all rules promulgated  
28 pursuant to this article. A renewal registration shall expire not more than one year from the date  
29 of issuance.

30 (e) At least sixty days prior to the registration expiration date, an application for renewal  
31 shall be submitted by the office based medication-assisted treatment program to the secretary on  
32 forms furnished by the secretary. A registration shall be renewed if the secretary determines that

33 the applicant is in compliance with this article and with all rules promulgated pursuant to this  
34 article. A registration issued to one program location pursuant to this article is not transferrable  
35 or assignable. Any change of ownership of a registered medication-assisted treatment program  
36 requires submission of a new application. The medication-assisted treatment program shall notify  
37 the secretary of any change in ownership within ten days of the change and must submit a new  
38 application within the time frame prescribed by the secretary.

39 (f) Any person, partnership, association or corporation seeking to obtain or renew a  
40 registration for an office based medication-assisted treatment program in this state must submit  
41 to the secretary the following documentation:

42 (1) Full operating name of the program as advertised;

43 (2) Legal name of the program as registered with the West Virginia Secretary of State;

44 (3) Physical address of the program;

45 (4) Preferred mailing address for the program;

46 (5) Email address to be used as the primary contact for the program;

47 (6) Federal Employer Identification Number assigned to the program;

48 (7) All business licenses issued to the program by this state, the state Tax Department,  
49 the Secretary of State and all other applicable business entities;

50 (8) Brief description of all services provided by the program;

51 (9) Hours of operation;

52 (10) Legal Registered Owner Name – name of the person registered as the legal owner  
53 of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal  
54 owner separately, indicating the percentage of ownership;

55 (11) Medical director's full name, medical license number, Drug Enforcement  
56 Administration registration number, and a listing of all current certifications;

57 (12) For each physician, counselor or social worker of the program, provide the following:

58 (A) Employee's role and occupation within the program;

- 59           (B) Full legal name;
- 60           (C) Medical license, if applicable;
- 61           (D) Drug Enforcement Administration registration number, if applicable;
- 62           (E) Drug Enforcement Administration identification number to prescribe buprenorphine  
63 for addiction, if applicable; and
- 64           (F) Number of hours worked at program per week;
- 65           (13) Name and location address of all programs owned or operated by the applicant;
- 66           (14) Notarized signature of applicant;
- 67           (15) Check or money order for registration fee;
- 68           (16) Verification of education and training for all physicians, counselors and social workers  
69 practicing at or used by referral by the program such as fellowships, additional education,  
70 accreditations, board certifications and other certifications;
- 71           (17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber  
72 practicing at the program for the three months preceding the date of application; and
- 73           (18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the  
74 West Virginia Health Care Authority.
- 75           (g) Upon satisfaction that an applicant has met all of the requirements of this article, the  
76 secretary shall issue a registration to operate an office based medication-assisted treatment  
77 program. An entity that obtains this registration may possess, have custody or control of, and  
78 dispense drugs indicated and approved by the United States Food and Drug Administration for  
79 the treatment of substance use disorders.
- 80           (h) The office based medication-assisted treatment program shall display the current  
81 registration in a prominent location where services are provided and in clear view of all patients.
- 82           (i) The secretary or his or her designee shall perform complaint and verification  
83 inspections on all office based medication-assisted treatment programs that are subject to this  
84 article and all rules adopted pursuant to this article to ensure continued compliance.

85 (j) Any person, partnership, association or corporation operating a medication-assisted  
86 treatment program shall be permitted to continue operation until the effective date of the new rules  
87 promulgated pursuant to this article. At that time a person, partnership, association or corporation  
88 shall file for registration within six months pursuant to the licensing procedures and requirements  
89 of this section and the new rules promulgated hereunder. The existing procedures of the person,  
90 partnership, association or corporation shall remain effective until receipt of the registration.

**§16-5Y-5. Operational requirements.**

1 (a) The medication-assisted treatment program shall be licensed and registered in this  
2 state with the secretary, the Secretary of State, the state Tax Department and all other applicable  
3 business or licensing entities.

4 (b) The program sponsor need not be a licensed physician but shall employ a licensed  
5 physician for the position of medical director, when required by the rules promulgated pursuant to  
6 this article.

7 (c) Each medication-assisted treatment program shall designate a medical director. If the  
8 medication-assisted treatment program is accredited by a Substance Abuse and Mental Health  
9 Services Administration (SAMHSA) approved accrediting body that meets nationally accepted  
10 standards for providing medication-assisted treatment, including the Commission on  
11 Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission on Accreditation of  
12 Healthcare Organizations, then the program may designate a medical director to oversee all  
13 facilities associated with the accredited medication-assisted treatment program. The medical  
14 director shall be responsible for the operation of the medication-assisted treatment program, as  
15 further specified in the rules promulgated pursuant to this article. He or she may delegate the day  
16 to day operation of medication-assisted treatment program as provided in rules promulgated  
17 pursuant to this article. Within ten days after termination of a medical director, the medication-  
18 assisted treatment program shall notify the director of the identity of another medical director for

19 that program. Failure to have a medical director practicing at the program may be the basis for a  
20 suspension or revocation of the program license. The medical director shall:

21 (1) Have a full, active and unencumbered license to practice allopathic medicine or surgery  
22 from the West Virginia Board of Medicine or to practice osteopathic medicine or surgery from the  
23 West Virginia Board of Osteopathic Medicine in this state and be in good standing and not under  
24 any probationary restrictions;

25 (2) Meet both of the following training requirements:

26 (A) If the physician prescribes a partial opioid agonist, he or she shall complete the  
27 requirements for the Drug Addiction Treatment Act of 2000; and

28 (B) Complete other programs and continuing education requirements as further described  
29 in the rules promulgated pursuant to this article;

30 (3) Practice at the licensed or registered medication-assisted treatment program a  
31 sufficient number of hours, based upon the type of medication-assisted treatment license or  
32 registration issued pursuant to this article, to ensure regulatory compliance and carry out those  
33 duties specifically assigned to the medical director as further described in the rules promulgated  
34 pursuant to this article;

35 (4) Be responsible for monitoring and ensuring compliance with all requirements related  
36 to the licensing and operation of the medication-assisted treatment program;

37 (5) Supervise, control and direct the activities of each individual working or operating at  
38 the medication-assisted treatment program, including any employee, volunteer or individual under  
39 contract, who provides medication-assisted treatment at the program or is associated with the  
40 provision of that treatment. The supervision, control and direction shall be provided in accordance  
41 with rules promulgated by the secretary; and

42 (6) Complete other requirements prescribed by the secretary by rule.

43 (d) Each medication-assisted treatment program shall designate counseling staff, either  
44 employee or those used on a referral-basis by the program, which meet the requirements of this

45 article and the rules promulgated pursuant to this article. The individual members of the  
46 counseling staff shall have one or more of the following qualifications:

47 (1) A licensed psychiatrist;

48 (2) Certification as an alcohol and drug counselor;

49 (3) Certification as an advanced alcohol and drug counselor;

50 (4) A counselor, psychologist, marriage and family therapist or social worker with a  
51 master's level education with a specialty or specific training in treatment for substance use  
52 disorders, as further described in the rules promulgated pursuant to this article;

53 (5) Under the direct supervision of an advanced alcohol and drug counselor, a counselor  
54 with a bachelor's degree in social work or another relevant human services field: *Provided*, That  
55 the individual practicing with a bachelor's degree under supervision applies for certification as an  
56 alcohol and drug counselor within three years of the date of employment as a counselor; or

57 (6) A counselor with a graduate degree actively working toward licensure or certification  
58 in the individual's chosen field under supervision of a licensed or certified professional in that field  
59 and/or advanced alcohol and drug counselor.

60 (e) The medication-assisted treatment program shall be eligible for, and not prohibited  
61 from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing  
62 a patient for any medication-assisted treatment, a medication-assisted treatment program must  
63 receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial  
64 from a patient's insurer or West Virginia Medicaid denying coverage for such treatment. The  
65 program shall also document whether a patient has no insurance. At the option of the medication-  
66 assisted treatment program, treatment may commence prior to billing.

67 (f) The medication-assisted treatment program shall apply for and receive approval as  
68 required from the United States Drug Enforcement Administration, Center for Substance Abuse  
69 Treatment or an organization designated by Substance Abuse and Mental Health and Mental  
70 Health Administration.

71 (g) All persons employed by the medication-assisted treatment program shall comply with  
72 the requirements for the operation of a medication-assisted treatment program established within  
73 this article or by any rule adopted pursuant to this article.

74 (h) All employees of an opioid treatment program shall furnish fingerprints for a state and  
75 federal criminal records check by the Criminal Identification Bureau of the West Virginia State  
76 Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a  
77 signed authorization for the release of information and retention of the fingerprints by the Criminal  
78 Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall  
79 be subject to the provisions of article forty-nine, chapter sixteen of this code and subsequent rules  
80 promulgated thereunder.

81 (i) The medication-assisted treatment program shall not be owned by, nor shall it employ  
82 or associate with, any physician or prescriber:

83 (1) Whose Drug Enforcement Administration number is not currently full, active and  
84 unencumbered;

85 (2) Whose application for a license to prescribe, dispense or administer a controlled  
86 substance has been denied by and is not full, active and unencumbered in any jurisdiction; or

87 (3) Whose license is anything other than a full, active and unencumbered license to  
88 practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic  
89 medicine or surgery by the West Virginia Board of Osteopathic Medicine in this state, and, who is  
90 in good standing and not under any probationary restrictions.

91 (j) A person may not dispense any medication-assisted treatment medication, including a  
92 controlled substance as defined by section one hundred one, article one, chapter sixty-a of this  
93 code, on the premises of a licensed medication-assisted treatment program, unless he or she is  
94 a physician or pharmacist licensed in this state and employed by the medication-assisted  
95 treatment program unless the medication-assisted treatment program is a federally-certified  
96 narcotic treatment program. Prior to dispensing or prescribing medication-assisted treatment

97 medications, the treating physician must access the Controlled Substances Monitoring Program  
98 database to ensure the patient is not seeking medication-assisted treatment medications that are  
99 controlled substances from multiple sources, and to assess potential adverse drug interactions,  
100 or both. Prior to dispensing or prescribing medication-assisted treatment medications, the treating  
101 physician shall also ensure that the medication-assisted treatment medication utilized is related  
102 to an appropriate diagnosis of a substance use disorder and approved for such usage. The  
103 physician shall also review the Controlled Substances Monitoring Program database no less than  
104 quarterly and at each patient's physical examination. The results obtained from the Controlled  
105 Substances Monitoring Program Database shall be maintained with the patient's medical records.

106 (k) A medication-assisted treatment program responsible for medication administration  
107 shall comply with:

- 108 (1) The West Virginia Board of Pharmacy regulations;  
109 (2) The West Virginia Board of Examiners for Registered Professional Nurses regulations;  
110 (3) All applicable federal laws and regulations relating to controlled substances; and  
111 (4) Any requirements as specified in the rules promulgated pursuant to this article.

112 (l) Each medication-assisted treatment program location shall be licensed separately,  
113 regardless of whether the program is operated under the same business name or management  
114 as another program.

115 (m) The medication-assisted treatment program shall develop and implement patient  
116 protocols, treatment plans and profiles, which shall include, but not be limited by, the following  
117 guidelines:

- 118 (1) When a physician diagnoses an individual as having a substance use disorder, the  
119 physician may treat the substance use disorder by managing it with medication in doses not  
120 exceeding those approved by the United States Food and Drug Administration as indicated for  
121 the treatment of substance use disorders and not greater than those amounts described in the  
122 rules promulgated pursuant to this article. The treating physician and treating counselor's

123 diagnoses and treatment decisions shall be made according to accepted and prevailing standards  
124 for medical care;

125 (2) The medication-assisted treatment program shall maintain a record of all of the  
126 following:

127 (A) Medical history and physical examination of the individual;

128 (B) The diagnosis of substance use disorder of the individual;

129 (C) The plan of treatment proposed, the patient's response to the treatment and any  
130 modification to the plan of treatment;

131 (D) The dates on which any medications were prescribed, dispensed or administered, the  
132 name and address of the individual for whom the medications were prescribed, dispensed or  
133 administered and the amounts and dosage forms for any medications prescribed, dispensed or  
134 administered;

135 (E) A copy of the report made by the physician or counselor to whom referral for evaluation  
136 was made, if applicable; and

137 (F) A copy of the coordination of care agreement, which is to be signed by the patient,  
138 treating physician and treating counselor. If a change of treating physician or treating counselor  
139 takes place, a new agreement must be signed. The coordination of care agreement must be  
140 updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not  
141 updated, this review must be documented in the patient's record. The coordination of care  
142 agreement will be provided in a form prescribed and made available by the secretary;

143 (3) Medication-assisted treatment programs shall report information, data, statistics and  
144 other information as directed in this code, and the rules promulgated pursuant to this article to  
145 required agencies and other authorities;

146 (4) A physician, physician assistant, or advanced practice registered nurse shall perform  
147 a physical examination of a patient on the same day that the prescriber initially prescribes,  
148 dispenses or administers a medication-assisted treatment medication to a patient and at intervals  
149 as required in the rules promulgated pursuant to this article;

150 (5) An alcohol and drug abuse counselor, an advanced alcohol and drug abuse counselor  
151 or other qualified counselor, psychiatrist, psychologist or social worker shall perform a  
152 biopsychosocial assessment, including, but not limited to, a mental status examination of a patient  
153 on the same day or no more than seven days prior to the day that the physician initially prescribes,  
154 dispenses or administers a medication-assisted treatment medication to a patient and at intervals  
155 as required in the rules promulgated pursuant to this article; and

156 (6) A prescriber authorized to prescribe a medication-assisted treatment medication who  
157 practices at a medication-assisted treatment program is responsible for maintaining the control  
158 and security of his or her prescription blanks and any other method used for prescribing a  
159 medication-assisted treatment medication. The prescriber shall comply with all state and federal  
160 requirements for tamper-resistant prescription paper. In addition to any other requirements  
161 imposed by statute or rule, the prescriber shall notify the secretary and appropriate law  
162 enforcement agencies in writing within twenty-four hours following any theft or loss of a  
163 prescription blank or breach of any other method of prescribing a medication-assisted treatment  
164 medication.

165 (n) Medication-assisted treatment programs shall only prescribe, dispense or administer  
166 liquid methadone to patients pursuant to the restrictions and requirements of the rules  
167 promulgated pursuant to this article.

168 (o) The medication-assisted treatment program shall immediately notify the secretary, or  
169 his or her designee, in writing of any changes to its operations that affect the medication-assisted  
170 treatment program's continued compliance with the certification and licensure requirements.

**§16-5Y-6. Restrictions; variances and waivers.**

1 (a) A medication-assisted treatment program shall not be located, operated, managed or  
2 owned at the same location where a chronic pain management clinic licensed and defined in  
3 article five-h, chapter sixteen of this code is located.

4 (b) Medication-assisted treatment programs shall not have procedures for offering a  
5 bounty, monetary, equipment, or merchandise reward, or free services for individuals in exchange  
6 for recruitment of new patients into the facility.

7 (c) Medication-assisted treatment programs shall not be located within one-half mile of a  
8 public or private licensed day care center or public or private K-12 school.

9 Existing medication-assisted treatment programs, including both opioid treatment  
10 programs and office based medication-assisted treatment programs that are located within one-  
11 half mile of a public or private licensed day care center or public or private K-12 school, shall be  
12 granted a variance, provided that the facility demonstrates adequate patient population controls  
13 and that it may otherwise meet the requirements of this article and the rules promulgated pursuant  
14 to this article.

15 (d) The secretary may grant a waiver or a variance from any licensure or registration  
16 standard, or portion thereof, for the period during which the license or registration is in effect.

17 (1) Requests for waivers or variances of licensure or registration standards shall be in  
18 writing to the secretary and shall include:

19 (A) The specific section of this article or rules promulgated pursuant to this article for which  
20 a waiver or variance is sought;

21 (B) The rationale for requesting the waiver or variance;

22 (C) Documentation by the medication-assisted treatment program's medical director to the  
23 secretary that describes how the program will maintain the quality of services and patient safety  
24 if the wavier or variance is granted; and

25 (D) The consequences of not receiving approval of the requested wavier or variance.

26 (2) The secretary shall issue a written statement to the medication-assisted treatment  
27 program granting or denying a request for a waiver or variance of program licensure or registration  
28 standards.

29           (3) The medication-assisted treatment program shall maintain a file copy of all requests  
30 for waivers or variances and the approval or denial of the requests for the period during which the  
31 license or registration is in effect.

32           (4) The Office of Health Facility Licensure and Certification shall inspect each medication-  
33 assisted treatment program prior to a waiver or variance being granted, including a review of  
34 patient records, to ensure and verify that any waiver or variance request meets the spirit and  
35 purpose of this article and the rules promulgated pursuant to this article. The Office of Health  
36 Facility Licensure and Certification may verify, by unannounced inspection, that the medication-  
37 assisted treatment program is in compliance with any waiver or variance granted by the secretary  
38 for the duration of such waiver or variance.

**§16-5Y-7. Inspection; inspection warrant.**

1           (a) The Office of Health Facility Licensure and Certification shall inspect each opioid  
2 treatment program annually, including a review of the patient records, to ensure that the program  
3 complies with this article and the applicable rules. A pharmacist, employed or contracted by the  
4 secretary, licensed in this state, and a law-enforcement officer shall be present at each inspection.

5           (b) The Office of Health Facility Licensure and Certification may perform unannounced  
6 complaint and verification inspections at office based medication-assisted treatment programs,  
7 including a review of the patient records, to ensure that the program complies with this article and  
8 the applicable rules. A pharmacist, employed or contracted by the secretary, licensed in this state  
9 and a law-enforcement officer may be present at each inspection.

10           (c) During an onsite inspection, the inspectors shall make a reasonable attempt to discuss  
11 each violation with the medical director or other owners of the medication-assisted treatment  
12 program before issuing a formal written notification.

13           (d) Any action taken to correct a violation shall be documented in writing by the medical  
14 director or other owners of the medication-assisted treatment program and may be verified by  
15 follow-up visits by the Office of Health Facility Licensure and Certification.

16 (e) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in  
17 the manner provided by law, maintain an action in the name of the state for an inspection warrant  
18 against any person, partnership, association or corporation to allow any inspection or seizure of  
19 records in order to complete any inspection allowed by this article or the rules promulgated  
20 pursuant to this article, or to meet any other purpose of this article or the rules promulgated  
21 pursuant to this article.

22 (f) When possible, inspections for annual certification and licensure by the medication-  
23 assisted treatment programs will be done consecutively or concurrently. However, this provision  
24 does not limit the ability to conduct unannounced inspections pursuant to a complaint.

**§16-5Y-8. License and registration limitation; denial; suspension; revocation.**

1 (a) The secretary may, by order, impose a ban on the admission of patients or reduce the  
2 patient capacity of the medication-assisted treatment program, or any combination thereof, when  
3 he or she finds upon inspection of the medication-assisted treatment program that the licensee  
4 or registrant is not providing adequate care under the medication-assisted treatment program's  
5 existing patient quota, and that a reduction in quota or imposition of a ban on admissions, or any  
6 combination thereof, would place the licensee or registrant in a position to render adequate care.  
7 Any notice to a licensee or registrant of reduction in quota or ban on new admissions shall include  
8 the terms of the order, the reasons therefor and the date set for compliance.

9 (b) The secretary shall deny, suspend or revoke a license or registration issued pursuant  
10 to this article if the provisions of this article or of the rules promulgated pursuant to this article are  
11 violated. The secretary may revoke a program's license or registration and prohibit all physicians  
12 and licensed disciplines associated with that medication-assisted treatment program from  
13 practicing at the program location based upon an annual, periodic, complaint, verification or other  
14 inspection and evaluation.

15 (c) Before any such license or registration is denied, suspended or revoked, however,  
16 written notice shall be given to the licensee or registrant, stating the grounds for such denial,  
17 suspension or revocation.

18 (d) An applicant, licensee or registrant has ten working days after receipt of the secretary's  
19 order denying, suspending or revoking a license or registration to request a formal hearing  
20 contesting such denial, suspension or revocation of a license or registration under this article. If  
21 a formal hearing is requested, the applicant, licensee or registrant and the secretary shall proceed  
22 in accordance with the provisions of article five, chapter twenty-nine-a of this code.

23 (e) If a license or registration is denied or revoked as herein provided, a new application  
24 for license or registration shall be considered by the secretary if, when and after the conditions  
25 upon which the denial or revocation was based have been corrected and evidence of this fact has  
26 been furnished. A new license or registration shall then be granted after proper inspection, if  
27 applicable, has been made and all provisions of this article and rules promulgated pursuant to  
28 this article have been satisfied.

29 (f) Any applicant, licensee or registrant who is dissatisfied with the decision of the secretary  
30 as a result of the hearing provided in this section may, within thirty days after receiving notice of  
31 the decision, petition the circuit court of Kanawha County, in term or in vacation, for judicial review  
32 of the decision.

33 (g) The court may affirm, modify or reverse the decision of the secretary and either the  
34 applicant, licensee or registrant, or the secretary may appeal from the court's decision to the  
35 Supreme Court of Appeals.

36 (h) If the license or registration of a medication-assisted treatment program is denied,  
37 suspended or revoked, the medical director of the program, any owner of the program or owner  
38 or lessor of the medication-assisted treatment program property shall cease to operate the clinic,  
39 facility, office or program as a medication-assisted treatment program as of the effective date of  
40 the denial, suspension or revocation. The owner or lessor of the medication-assisted treatment  
41 program property is responsible for removing all signs and symbols identifying the premises as a  
42 medication-assisted treatment program within thirty days. Any administrative appeal of such  
43 denial, suspension or revocation shall not stay the denial, suspension or revocation.

44 (i) Upon the effective date of the denial, suspension or revocation, the medical director of  
45 the medication-assisted treatment program shall advise the secretary and the Board of Pharmacy  
46 of the disposition of all medications located on the premises. The disposition is subject to the  
47 supervision and approval of the secretary. Medications that are purchased or held by a  
48 medication-assisted treatment program that is not licensed may be deemed adulterated.

49 (j) If the license or registration of a medication-assisted treatment program is suspended  
50 or revoked, any person named in the licensing or registration documents of the program, including  
51 persons owning or operating the medication-assisted treatment program, may not, as an  
52 individual or as part of a group, apply to operate another medication-assisted treatment program  
53 for up to five years after the date of suspension or revocation. The secretary may grant a variance  
54 pursuant to section six of this article to the prohibition of this subsection.

55 (k) The period of suspension for the license or registration of a medication-assisted  
56 treatment program shall be prescribed by the secretary, but may not exceed one year.

**§16-5Y-9. Violations; penalties; injunction.**

1 (a) Any person, partnership, association or corporation which establishes, conducts,  
2 manages or operates a medication-assisted treatment program without first obtaining a license  
3 or registration as herein provided, or who violates any provisions of this article or any rule lawfully  
4 promulgated pursuant to this article, shall be assessed a civil penalty by the secretary in  
5 accordance with this subsection. Each day of continuing violation after conviction shall be  
6 considered a separate violation:

7 (1) If a medication-assisted treatment program or any owner or medical director is found  
8 to be in violation of any provision of this article, unless otherwise noted herein, the secretary may  
9 limit, suspend or revoke the program's license or registration;

10 (2) If the program's medical director knowingly and intentionally misrepresents actions  
11 taken to correct a violation, the secretary may impose a civil money penalty not to exceed \$10,000

12 and, in the case of any owner-operator medication-assisted treatment program, limit or revoke a  
13 medication-assisted treatment program's license or registration;

14 (3) If any owner or medical director of a medication-assisted treatment program  
15 concurrently operates an unlicensed or unregistered medication-assisted treatment program, the  
16 secretary may impose a civil money penalty upon the owner or medical director, or both, not to  
17 exceed \$5,000 per day;

18 (4) If the owner of a medication-assisted treatment program that requires a license or  
19 registration under this article fails to apply for a new license or registration for the program upon  
20 a change of ownership and operates the program under new ownership, the secretary may  
21 impose a civil money penalty upon the owner, not to exceed \$5,000; or

22 (5) If a physician operates, owns or manages an unlicensed or unregistered medication-  
23 assisted treatment program that is required to be licensed or registered pursuant to this article;  
24 knowingly prescribes or dispenses or causes to be prescribed or dispensed, a medication-  
25 assisted treatment medication through misrepresentation or fraud; procures, or attempts to  
26 procure, a license or registration for a medication-assisted treatment program for any other person  
27 by making or causing to be made any false representation, the secretary may assess a civil money  
28 penalty of not more than \$20,000. The penalty may be in addition to or in lieu of any other action  
29 that may be taken by the secretary or any other board, court or entity.

30 (b) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in  
31 the manner provided by law, maintain an action in the name of the state for an injunction against  
32 any person, partnership, association or corporation to restrain or prevent the establishment,  
33 conduct, management or operation of any medication-assisted treatment program or violation of  
34 any provision of this article or any rule lawfully promulgated thereunder without first obtaining a  
35 license or registration in the manner herein provided.

36 (c) In determining whether a penalty is to be imposed and in fixing the amount of the  
37 penalty, the secretary shall consider the following factors:

38 (1) The gravity of the violation, including the probability that death or serious physical or  
39 emotional harm to a patient has resulted, or could have resulted, from the medication-assisted  
40 treatment program's actions or the actions of the medical director or any practicing physician, the  
41 severity of the action or potential harm, and the extent to which the provisions of the applicable  
42 laws or rules were violated;

43 (2) What actions, if any, the owner or medical director took to correct the violations;

44 (3) Whether there were any previous violations at the medication-assisted treatment  
45 program; and

46 (4) The financial benefits that the medication-assisted treatment program derived from  
47 committing or continuing to commit the violation.

48 (d) Upon finding that a physician has violated the provisions of this article or rules adopted  
49 pursuant to this article, the secretary shall provide notice of the violation to the applicable licensing  
50 board.

**§16-5Y-10. Advertisement disclosure.**

1 Any advertisement made by or on behalf of a medication-assisted treatment program  
2 through public media, such as a telephone directory, medical directory, newspaper or other  
3 periodical, outdoor advertising, radio or television, or through written or recorded communication,  
4 concerning the treatment of substance use disorders, as defined in section two of this article, shall  
5 include the name of, at a minimum, the medical director responsible for the content of the  
6 advertisement.

**§16-5Y-11. State Opioid Treatment Authority.**

1 (a) Prior to establishing, operating, maintaining or advertising a medication-assisted  
2 treatment program within this state, a medication-assisted treatment program shall be approved  
3 by the state opioid treatment authority for operation of a medication-assisted treatment program  
4 in this state.

5 (b) The state opioid treatment authority shall act as the state's coordinator for the  
6 development and monitoring of medication-assisted treatment programs and it shall serve as a  
7 liaison with the appropriate federal agencies.

8 (c) The designated state oversight agency is responsible for licensing, monitoring and  
9 investigating complaints and grievances regarding medication-assisted treatment programs.

10 (d) The powers and duties of the state opioid treatment authority include, but are not  
11 limited to, the following:

12 (1) Facilitate the development and implementation of rules, regulations, standards and  
13 best practice guidelines to ensure the quality of services delivered by medication-assisted  
14 treatment programs;

15 (2) Act as a liaison between relevant state and federal agencies;

16 (3) Review medication-assisted treatment guidelines, rules, regulations and recovery  
17 models for individualized treatment plans of care developed by the federal government and other  
18 nationally recognized authorities approved by the secretary;

19 (4) Ensure delivery of technical assistance and informational materials to medication-  
20 assisted treatment programs as needed;

21 (5) Perform both scheduled and unscheduled site visits to medication-assisted treatment  
22 programs in cooperation with the identified state oversight agency when necessary and  
23 appropriate;

24 (6) Consult with the federal government regarding approval or disapproval of requests for  
25 exceptions to federal regulations, where appropriate;

26 (7) Review and approve exceptions to federal and state dosage policies and procedures;

27 (8) Receive and refer patient appeals and grievances to the designated state oversight  
28 agency when appropriate; and

29 (9) Work cooperatively with other relevant state agencies to determine the services  
30 needed and the location of a proposed medication-assisted treatment program.

**§16-5Y-12. Moratorium; certificate of need.**

1           There is a moratorium on the licensure of new opioid treatment programs which do not  
2 have a certificate of need as of the effective date of the enactment of this section during the 2016  
3 regular session of the Legislature which shall continue until the Legislature determines that there  
4 is a necessity for additional opioid treatment programs in West Virginia.

**§16-5Y-13. Rules; minimum standards for medication-assisted treatment programs.**

1           (a) The secretary shall promulgate rules in accordance with the provisions of chapter  
2 twenty-nine-a of this code for the licensure of medication-assisted treatment programs to ensure  
3 adequate care, treatment, health, safety, welfare and comfort of patients at these facilities. These  
4 rules shall include, at a minimum:

5           (1) The process to be followed by applicants seeking a license;

6           (2) The qualifications and supervision of licensed and nonlicensed personnel at  
7 medication-assisted treatment programs and training requirements for all facility health care  
8 practitioners who are not regulated by another board;

9           (3) The provision and coordination of patient care, including the development of a written  
10 plan of care and patient contract;

11           (4) The management, operation, staffing and equipping of the medication-assisted  
12 treatment program;

13           (5) The clinical, medical, patient and business records kept by the medication-assisted  
14 treatment program;

15           (6) The procedures for inspections and for review of utilization and quality of patient care;

16           (7) The standards and procedures for the general operation of a medication-assisted  
17 treatment program, including facility operations, physical operations, infection control  
18 requirements, health and safety requirements and quality assurance;

19           (8) Identification of drugs that may be used to treat substance use disorders that identify  
20 a facility as a medication-assisted treatment program;

21 (9) Any other criteria that identify a facility as a medication-assisted treatment program;

22 (10) The standards and procedures to be followed by an owner in providing supervision,  
23 direction and control of individuals employed by or associated with a medication-assisted  
24 treatment program;

25 (11) Data collection and reporting requirements;

26 (12) Criteria and requirements related to specific medication-assisted treatment  
27 medications; and

28 (13) Such other standards or requirements as the secretary determines are appropriate.

29 (b) The Legislature finds that an emergency exists and, therefore, the secretary shall file  
30 an emergency rule to implement the provisions of this section pursuant to the provisions of section  
31 fifteen, article three, chapter twenty-nine-a of this code.

## **CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**

### **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

#### **§60A-9-4. Required information.**

1 (a) Whenever a medical services provider dispenses a controlled substance listed in  
2 Schedule II, III or IV as established under the provisions of article two of this chapter or an opioid  
3 antagonist, or whenever a prescription for the controlled substance or opioid antagonist is filled  
4 by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for  
5 out-patient use; or (iii) a pharmacy or pharmacist licensed by the Board of Pharmacy, but situated  
6 outside this state for delivery to a person residing in this state, the medical services provider,  
7 health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated  
8 by the board under this article, report the following information, as applicable:

9 (1) The name, address, pharmacy prescription number and Drug Enforcement  
10 Administration controlled substance registration number of the dispensing pharmacy or the  
11 dispensing physician or dentist;

12 (2) The full legal name, address and birth date of the person for whom the prescription is  
13 written;

14 (3) The name, address and Drug Enforcement Administration controlled substances  
15 registration number of the practitioner writing the prescription;

16 (4) The name and national drug code number of the Schedule II, III and IV controlled  
17 substance or opioid antagonist dispensed;

18 (5) The quantity and dosage of the Schedule II, III and IV controlled substance or opioid  
19 antagonist dispensed;

20 (6) The date the prescription was written and the date filled;

21 (7) The number of refills, if any, authorized by the prescription;

22 (8) If the prescription being dispensed is being picked up by someone other than the  
23 patient on behalf of the patient, the first name, last name and middle initial, address and birth date  
24 of the person picking up the prescription as set forth on the person's government-issued photo  
25 identification card shall be retained in either print or electronic form until such time as otherwise  
26 directed by rule promulgated by the board; and

27 (9) The source of payment for the controlled substance dispensed.

28 (b) The board may prescribe by rule promulgated under this article the form to be used in  
29 prescribing a Schedule II, III, and IV substance or opioid antagonist if, in the determination of the  
30 board, the administration of the requirements of this section would be facilitated.

31 (c) Products regulated by the provisions of article ten of this chapter shall be subject to  
32 reporting pursuant to the provisions of this article to the extent set forth in said article.

33 (d) Reporting required by this section is not required for a drug administered directly to a  
34 patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a  
35 patient by a practitioner: *Provided*, That the quantity dispensed by a prescribing practitioner to his  
36 or her own patient may not exceed an amount adequate to treat the patient for a maximum of

37 seventy-two hours with no greater than two seventy-two-hour cycles dispensed in any fifteen-day  
38 period of time.

**§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 the board is confidential and  
2 not subject to the provisions of chapter twenty-nine-b of this code or obtainable as discovery in  
3 civil matters absent a court order and is open to inspection only by inspectors and agents of the  
4 board, members of the West Virginia State Police expressly authorized by the Superintendent of  
5 the West Virginia State Police to have access to the information, authorized agents of local  
6 law-enforcement agencies as members of a federally affiliated drug task force, authorized agents  
7 of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical  
8 Services, duly authorized agents of the Office of the Chief Medical Examiner for use in  
9 post-mortem examinations, duly authorized agents of licensing boards of practitioners in this state  
10 and other states authorized to prescribe Schedules II, III, and IV controlled substances,  
11 prescribing practitioners and pharmacists and persons with an enforceable court order or  
12 regulatory agency administrative subpoena: *Provided*, That all law-enforcement personnel who  
13 have access to the Controlled Substances Monitoring Program database shall be granted access  
14 in accordance with applicable state laws and the board's legislative rules, shall be certified as a  
15 West Virginia law-enforcement officer and shall have successfully completed training approved  
16 by the board. All information released by the board must be related to a specific patient or a  
17 specific individual or entity under investigation by any of the above parties except that practitioners  
18 who prescribe or dispense controlled substances may request specific data related to their Drug  
19 Enforcement Administration controlled substance registration number or for the purpose of  
20 providing treatment to a patient: *Provided, however*, That the West Virginia Controlled Substances  
21 Monitoring Program Database Review Committee established in subsection (b) of this section is  
22 authorized to query the database to comply with said subsection.

23           (2) Subject to the provisions of subdivision (1) of this subsection, the board shall also  
24 review the West Virginia Controlled Substance Monitoring Program database and issue reports  
25 that identify abnormal or unusual practices of patients who exceed parameters as determined by  
26 the advisory committee established in this section. The board shall communicate with ~~prescribers~~  
27 practitioners and dispensers to more effectively manage the medications of their patients in the  
28 manner recommended by the advisory committee. All other reports produced by the board shall  
29 be kept confidential. The board shall maintain the information required by this article for a period  
30 of not less than five years. Notwithstanding any other provisions of this code to the contrary, data  
31 obtained under the provisions of this article may be used for compilation of educational, scholarly  
32 or statistical purposes, and may be shared with the West Virginia Department of Health and  
33 Human Resources for those purposes, as long as the identities of persons or entities and any  
34 personally identifiable information, including protected health information, contained therein shall  
35 be redacted, scrubbed or otherwise irreversibly destroyed in a manner that will preserve the  
36 confidential nature of the information. No individual or entity required to report under section four  
37 of this article may be subject to a claim for civil damages or other civil relief for the reporting of  
38 information to the board as required under and in accordance with the provisions of this article.

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

42           (A) Consist of the following members: A physician licensed by the West Virginia Board of  
43 Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed  
44 by the West Virginia Board of ~~Osteopathy~~ Osteopathic Medicine, a licensed physician certified by  
45 the American Board of Pain Medicine, a licensed physician board certified in medical oncology  
46 recommended by the West Virginia State Medical Association, a licensed physician board  
47 certified in palliative care recommended by the West Virginia Center on End of Life Care, a  
48 pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the

49 West Virginia Academy of Family Physicians, an expert in drug diversion and such other members  
50 as determined by the board.

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

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

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

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

65 (b) The board shall create a West Virginia Controlled Substances Monitoring Program  
66 Database Review Committee of individuals consisting of two prosecuting attorneys from West  
67 Virginia counties, two physicians with specialties which require extensive use of controlled  
68 substances and a pharmacist who is trained in the use and abuse of controlled substances. The  
69 review committee may determine that an additional physician who is an expert in the field under  
70 investigation be added to the team when the facts of a case indicate that the additional expertise  
71 is required. The review committee, working independently, may query the database based on  
72 parameters established by the advisory committee. The review committee may make  
73 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns  
74 indicated by outliers in the system or abnormal or unusual usage patterns of controlled

75 substances by patients which the review committee has reasonable cause to believe necessitates  
76 further action by law enforcement or the licensing board having jurisdiction over the ~~prescribers~~  
77 practitioners or dispensers under consideration. The review committee shall also review notices  
78 provided by the chief medical examiner pursuant to subsection (h), section ten, article twelve,  
79 chapter sixty-one of this code and determine on a case-by-case basis whether a practitioner who  
80 prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose  
81 may have breached professional or occupational standards or committed a criminal act when  
82 prescribing the controlled substance at issue to the decedent. Only in those cases in which there  
83 is reasonable cause to believe a breach of professional or occupational standards or a criminal  
84 act may have occurred, the review committee shall notify the appropriate professional licensing  
85 agency having jurisdiction over the applicable ~~prescriber~~ practitioner or dispenser and appropriate  
86 law-enforcement agencies and provide pertinent information from the database for their  
87 consideration. The number of cases identified shall be determined by the review committee based  
88 on a number that can be adequately reviewed by the review committee. The information obtained  
89 and developed may not be shared except as provided in this article and is not subject to the  
90 provisions of chapter twenty-nine-b of this code or obtainable as discovering in civil matters  
91 absent a court order.

92 (c) The board is responsible for establishing and providing administrative support for the  
93 advisory committee and the West Virginia Controlled Substances Monitoring Program Database  
94 Review Committee. The advisory committee and the review committee shall elect a chair by  
95 majority vote. Members of the advisory committee and the review committee may not be  
96 compensated in their capacity as members but shall be reimbursed for reasonable expenses  
97 incurred in the performance of their duties.

98 (d) The board shall promulgate rules with advice and consent of the advisory committee,  
99 in accordance with the provisions of article three, chapter twenty-nine-a of this code. The  
100 legislative rules must include, but shall not be limited to, the following matters:

101 (1) Identifying parameters used in identifying abnormal or unusual prescribing or  
102 dispensing patterns;

103 (2) Processing parameters and developing reports of abnormal or unusual prescribing or  
104 dispensing patterns for patients, practitioners and dispensers;

105 (3) Establishing the information to be contained in reports and the process by which the  
106 reports will be generated and disseminated; and

107 (4) Setting up processes and procedures to ensure that the privacy, confidentiality, and  
108 security of information collected, recorded, transmitted and maintained by the review committee  
109 is not disclosed except as provided in this section.

110 ~~(e) All practitioners, as that term is defined in section one hundred one, article two of this~~  
111 ~~chapter who prescribe or dispense schedule II, III, or IV controlled substances shall have online~~  
112 ~~or other form of electronic access to the West Virginia Controlled Substances Monitoring Program~~  
113 ~~database;~~

114 (f) ~~(e)~~ Persons or entities with access to the West Virginia Controlled Substances  
115 Monitoring Program database pursuant to this section may, pursuant to rules promulgated by the  
116 board, delegate appropriate personnel to have access to said database.

117 ~~(g)~~ (f) Good faith reliance by a practitioner on information contained in the West Virginia  
118 Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or  
119 declining to prescribe or dispense a schedule II, III, or IV controlled substance shall constitute an  
120 absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing  
121 or declining to prescribe or dispense.

122 (h) ~~(g)~~ A prescribing or dispensing practitioner may notify law enforcement of a patient  
123 who, in the prescribing or dispensing practitioner's judgment, may be in violation of section four  
124 hundred ten, article four of this chapter, based on information obtained and reviewed from the  
125 controlled substances monitoring database. A prescribing or dispensing practitioner who makes  
126 a notification pursuant to this subsection is immune from any civil, administrative or criminal

127 liability that otherwise might be incurred or imposed because of the notification if the notification  
128 is made in good faith.

129       (†) (h) Nothing in the article may be construed to require a practitioner to access the West  
130 Virginia Controlled Substances Monitoring Program database except as provided in section five-a  
131 of this article.

132       (†) (i) The board shall provide an annual report on the West Virginia Controlled Substance  
133 Monitoring Program to the Legislative Oversight Commission on Health and Human Resources  
134 Accountability with recommendations for needed legislation no later than January 1 of each year.

**§60A-9-5a. Practitioner requirements to access database and conduct annual search of the  
database; required rulemaking.**

1       (a) All practitioners, as that term is defined in section one hundred-one, article two of this  
2 chapter who prescribe or dispense Schedule II, III or IV controlled substances shall register with  
3 the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or  
4 other electronic access to the program database: *Provided*, That compliance with the provisions  
5 of this subsection must be accomplished within thirty days of the practitioner obtaining a new  
6 license: *Provided, however*, That no licensing board may renew a practitioner's license without  
7 proof that the practitioner meet the requirements of this subsection.

8       (b) Upon initially prescribing or dispensing any pain-relieving controlled substance for a  
9 patient and at least annually thereafter should the ~~prescribe~~ practitioner or dispenser continue to  
10 treat the patient with controlled substances, all persons with prescriptive or dispensing authority  
11 and in possession of a valid Drug Enforcement Administration registration identification number  
12 and, who are licensed by the Board of Medicine as set forth in article three, chapter thirty of this  
13 code, the Board of Registered Professional Nurses as set forth in article seven, chapter thirty of  
14 this code, the Board of Dental Examiners as set forth in article four, chapter thirty of this code and  
15 the Board of ~~Osteopathy~~ Osteopathic Medicine as set forth in article fourteen, chapter thirty of  
16 this code shall access the West Virginia Controlled Substances Monitoring Program database for

17 information regarding specific patients for whom they are providing pain-relieving controlled  
18 substances as part of a course of treatment for chronic, nonmalignant pain but who are not  
19 suffering from a terminal illness. The information obtained from accessing the West Virginia  
20 Controlled Substances Monitoring Program database for the patient shall be documented in the  
21 patient's medical record. A pain-relieving controlled substance shall be defined as set forth in  
22 section one, article three-a, chapter thirty of this code.

23 ~~(b)~~ (c) The various boards mentioned in subsection (b) of this section shall promulgate  
24 both emergency and legislative rules pursuant to the provisions of article three, chapter  
25 twenty-nine-a of this code to effectuate the provisions of this section.

**§60A-9-7. Criminal penalties; and administrative violations.**

1 (a) Any person who is required to submit information to the state Board of Pharmacy  
2 pursuant to the provisions of this article who fails to do so as directed by the board is guilty of a  
3 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500.

4 (b) Any person who is required to submit information to the state Board of Pharmacy  
5 pursuant to the provisions of this article who knowingly and willfully refuses to submit the  
6 information required by this article is guilty of a misdemeanor and, upon conviction thereof, shall  
7 be confined in a county or regional jail not more than six months or fined not more than \$1,000,  
8 or both confined ~~or~~ and fined.

9 (c) Any person who is required by the provisions of this article to submit information to the  
10 state Board of Pharmacy who knowingly submits thereto information known to that person to be  
11 false or fraudulent is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a  
12 county or regional jail not more than one year or fined not more than \$5,000, or both confined ~~or~~  
13 and fined.

14 ~~(d) Any prescriber or dispenser who is required to access the information contained in the~~  
15 ~~West Virginia Controlled Substances Monitoring Program database as set forth in subsection (a)~~  
16 ~~of section five-a of this article and fails to do so as directed by the rules of their licensing board~~

17 ~~shall be subject to such discipline as the licensing board deems appropriate~~ Any person granted  
18 access to the information required by the provisions of this article to be maintained by the state  
19 Board of Pharmacy, who shall willfully disclose the information required to be maintained by this  
20 article in a manner inconsistent with a legitimate law-enforcement purpose, a legitimate  
21 professional regulatory purpose, the terms of a court order or as otherwise expressly authorized  
22 by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be  
23 confined in a county or regional jail for not more than six months or fined not more than \$1,000,  
24 or both confined and fined.

25 (e) ~~Any person granted access to the information required by the provisions of this article~~  
26 ~~to be maintained by the state Board of Pharmacy, who shall willfully disclose the information~~  
27 ~~required to be maintained by this article in a manner inconsistent with a legitimate~~  
28 ~~law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a court order~~  
29 ~~or as otherwise expressly authorized by the provisions of this article is guilty of a misdemeanor~~  
30 ~~and, upon conviction thereof, shall be confined in a county or regional jail for not more than six~~  
31 ~~months or fined not more than \$1,000, or both confined or fined.~~ Unauthorized access or use or  
32 unauthorized disclosure for reasons unrelated to the purposes of this article of the information in  
33 the database is a felony punishable by imprisonment in a state correctional facility for not less  
34 than one year nor more than five years or fined not less than \$3,000 nor more than \$10,000, or  
35 both imprisoned or fined.

36 (f) ~~Unauthorized access or use or unauthorized disclosure for reasons unrelated to the~~  
37 ~~purposes of this article of the information in the database is a felony punishable by imprisonment~~  
38 ~~in a state correctional facility for not less than one year nor more than five years or fined not less~~  
39 ~~than \$3,000 nor more than \$10,000, or both imprisoned or fined.~~ Any practitioner who fails to  
40 register with the West Virginia Controlled Substances Monitoring Program and obtain and  
41 maintain online or other electronic access to the program database as required in subsection (a),  
42 section five-a, article nine of this chapter, shall be subject to an administrative penalty of \$1,000

43 by the licensing board of his or her licensure. All such fines collected pursuant to this subsection  
44 shall be remitted by the applicable licensing board to the Fight Substance Abuse Fund created  
45 under section eight of this article. The provisions of this subsection shall become effective on July  
46 1, 2016.

47 (g) Any practitioner or dispenser who is required to access the information contained in  
48 the West Virginia Controlled Substances Monitoring Program database as set forth in subsection  
49 (a), section five-a of this article and fails to do so as directed by the rules of his or her licensing  
50 board shall be subject to such discipline as the licensing board deems appropriate and on or after  
51 July 1, 2016, be subject to a \$100 administrative penalty per violation by the applicable licensing  
52 board. All such fines collected pursuant to this subsection shall be transferred by the applicable  
53 licensing board to the Fight Substance Abuse Fund created under section eight of this article.

54 (h) Lack of available internet connectivity is a defense to any action brought pursuant to  
55 subsections (d) or (f) of this section.

**§60A-9-8. Creation of Fight Substance Abuse Fund.**

1 There is hereby created a special revenue account in the state treasury, designated the  
2 Fight Substance Abuse Fund, which shall be an interest-bearing account ~~and may be invested in~~  
3 ~~accordance with the provisions of article six, chapter twelve of this code, with interest income a~~  
4 ~~proper credit to the fund.~~ The fund shall consist of all moneys received from whatever source to  
5 further the purpose of this article ~~appropriations by the Legislature, gifts, donations or any other~~  
6 ~~source.~~ The fund shall be administered by the West Virginia Bureau for Public Health  
7 ~~Expenditures from the fund shall be for the following purposes: to provide funding for substance~~  
8 ~~abuse prevention, treatment, treatment coordination, recovery and education.~~ Any moneys  
9 remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal  
10 year. Fund balances shall be invested with the state's consolidated investment fund and any and  
11 all interest earnings on these investments shall be used solely for the purposes that moneys  
12 deposited in the fund may be used pursuant to this article.