

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Introduced**

**House Bill 3009**

BY DELEGATE SUMMERS

[Introduced March 14, 2017; Referred  
to the Committee on Health and Human Resources then  
the Judiciary.]



1 A BILL to amend and reenact §60A-9-5 of the Code of West Virginia, 1931, as amended, relating  
2 to access by the Office of Health Facility Licensure and Certification to the Controlled  
3 Substances Monitoring Program database for use in certification, licensure and regulation  
4 of health facilities.

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

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

**ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

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

1 (a)(1) The information required by this article to be kept by 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 law-  
6 enforcement agencies as members of a federally affiliated drug task force, authorized agents of  
7 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 post-  
9 mortem examinations, duly authorized agents of the Office of Health Facility Licensure and  
10 Certification for use in certification, licensure and regulation of health facilities, duly authorized  
11 agents of licensing boards of practitioners in this state and other states authorized to prescribe  
12 Schedules II, III and IV controlled substances, prescribing practitioners and pharmacists and  
13 persons with an enforceable court order or regulatory agency administrative subpoena: *Provided,*  
14 That all law-enforcement personnel who have access to the Controlled Substances Monitoring  
15 Program database shall be granted access in accordance with applicable state laws and the  
16 board's legislative rules, shall be certified as a West Virginia law-enforcement officer and shall

17 have successfully completed training approved by the board. All information released by the board  
18 must be related to a specific patient or a specific individual or entity under investigation by any of  
19 the above parties except that practitioners who prescribe or dispense controlled substances may  
20 request specific data related to their Drug Enforcement Administration controlled substance  
21 registration number or for the purpose of providing treatment to a patient: *Provided, however,*  
22 That the West Virginia Controlled Substances Monitoring Program Database Review Committee  
23 established in subsection (b) of this section is authorized to query the database to comply with  
24 said subsection.

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

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

44 (A) Consist of the following members: A physician licensed by the West Virginia Board of  
45 Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed  
46 by the West Virginia Board of Osteopathic Medicine, a licensed physician certified by the  
47 American Board of Pain Medicine, a licensed physician board certified in medical oncology  
48 recommended by the West Virginia State Medical Association, a licensed physician board  
49 certified in palliative care recommended by the West Virginia Center on End of Life Care, a  
50 pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the  
51 West Virginia Academy of Family Physicians, an expert in drug diversion and such other members  
52 as determined by the board.

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

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

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

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

67 (b) The board shall create a West Virginia Controlled Substances Monitoring Program  
68 Database Review Committee of individuals consisting of two prosecuting attorneys from West  
69 Virginia counties, two physicians with specialties which require extensive use of controlled  
70 substances and a pharmacist who is trained in the use and abuse of controlled substances. The  
71 review committee may determine that an additional physician who is an expert in the field under  
72 investigation be added to the team when the facts of a case indicate that the additional expertise  
73 is required. The review committee, working independently, may query the database based on  
74 parameters established by the advisory committee. The review committee may make  
75 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns  
76 indicated by outliers in the system or abnormal or unusual usage patterns of controlled  
77 substances by patients which the review committee has reasonable cause to believe necessitates  
78 further action by law enforcement or the licensing board having jurisdiction over the practitioners  
79 or dispensers under consideration. The review committee shall also review notices provided by  
80 the chief medical examiner pursuant to subsection (h), section ten, article twelve, chapter sixty-  
81 one of this code and determine on a case-by-case basis whether a practitioner who prescribed or  
82 dispensed a controlled substance resulting in or contributing to the drug overdose may have  
83 breached professional or occupational standards or committed a criminal act when prescribing  
84 the controlled substance at issue to the decedent. Only in those cases in which there is  
85 reasonable cause to believe a breach of professional or occupational standards or a criminal act  
86 may have occurred, the review committee shall notify the appropriate professional licensing  
87 agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-  
88 enforcement agencies and provide pertinent information from the database for their consideration.  
89 The number of cases identified shall be determined by the review committee based on a number  
90 that can be adequately reviewed by the review committee. The information obtained and  
91 developed may not be shared except as provided in this article and is not subject to the provisions

92 of chapter twenty-nine-b of this code or obtainable as discovering in civil matters absent a court  
93 order.

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

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

103 (1) Identifying parameters used in identifying abnormal or unusual prescribing or  
104 dispensing patterns;

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

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

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

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

115 (f) Good faith reliance by a practitioner on information contained in the West Virginia  
116 Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or  
117 declining to prescribe or dispense a schedule II, III, or IV controlled substance shall constitute an

118 absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing  
119 or declining to prescribe or dispense.

120 (g) A prescribing or dispensing practitioner may notify law enforcement of a patient who,  
121 in the prescribing or dispensing practitioner's judgment, may be in violation of section four  
122 hundred ten, article four of this chapter, based on information obtained and reviewed from the  
123 controlled substances monitoring database. A prescribing or dispensing practitioner who makes  
124 a notification pursuant to this subsection is immune from any civil, administrative or criminal  
125 liability that otherwise might be incurred or imposed because of the notification if the notification  
126 is made in good faith.

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

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

NOTE: The purpose of this bill is to grant the Office of Health Facility Licensure and Certification access to the Controlled Substances Monitoring Program database for regulatory purposes.

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