WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 517

BY SENATORS MAYNARD, SYPOLT, AND CLINE

[Introduced February 9, 2018; Referred

to the Committee on Health and Human Resources;

and then to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-3-14; and to amend said code by adding thereto a new section, designated §60A-9-10, all relating generally to drug overdoses and controlled substances monitoring; requiring state director of health or any county or municipal health officer investigate all instances of persons who have suffered or suspected of having suffered a drug overdose; requiring health care providers to report all instances of persons who have suffered or suspected of having suffered a drug overdose to state director of health; requiring the Board of Pharmacy to review and evaluate any complaint regarding health care providers with prescriptive authority have or may have issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a Schedule II, III, or IV controlled substance; establishing requirements; requiring hearings; authorizing disciplinary actions be taken; and authorizing rulemaking by state director of health, the Board of Pharmacy, and Board of Medicine.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE, ~~AND~~ OTHER INFECTIOUS DISEASES AND DRUG OVERDOSES.

§16-3-14. Drug overdoses; investigations; reporting; rulemaking.

(a) The state director of health or any county or municipal health officer shall inquire into and investigate all instances of persons who has suffered or is suspected of having suffered a drug overdose.

(b) County and municipal health officers shall report all instances of persons who have suffered or is suspected of having suffered a drug overdose to the state director of health.

(c) Physicians, nurses and other health care providers shall report all instances of persons who have suffered or is suspected of having suffered a drug overdose to the state director of

health.

(d) The state director of health shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this section.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-10. Review of complaints; requirements; investigations; hearings; disciplinary action; rulemaking.

(a) The Board of Pharmacy shall review and evaluate any complaint or information received from a law-enforcement agency, professional licensing board or any other source indicating that:

(1) A physician or other health care provider with prescriptive authority has issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV;

(2) A pattern of prescriptions issued by a physician or other health care provider with prescriptive authority indicates that he or she has issued prescriptions in the manner described in subdivision (1) of this subsection; or

(3) A patient of a health care provider with prescriptive authority has acquired, used or possessed a controlled substance listed in schedule II, III or IV in a fraudulent, illegal, unauthorized or otherwise inappropriate manner.

(b) If the Board of Pharmacy receives information described in subsection (a) of this section, the board must notify the health care provider with prescriptive authority as soon as practicable after receiving the information.

(c) A review and evaluation conducted pursuant to subsection (a) of this section must include, without limitation:

(1) A review of relevant information contained in the database of the program established

pursuant to §60A-9-3 of this code.

(2) A requirement that the health care provider with prescriptive authority who is the subject of the review and evaluation attest that he or she has complied with the requirements of this chapter, as applicable; and

(3) A request for additional relevant information from the health care provider with prescriptive authority who is the subject of the review and evaluation.

(d) If, after a review and evaluation conducted pursuant to subsection (a) of this section, the Board of Pharmacy determines that a health care provider with prescriptive authority may have issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a controlled substance listed in schedule II, III or IV, the Board of Pharmacy and the Board of Medicine shall proceed as if a written complaint had been filed against the health care provider with prescriptive authority. If, after conducting an investigation and a hearing in accordance with the legislative rule promulgated pursuant to subsection (m) of this section, the boards determine that the health care provider with prescriptive authority issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription, the boards must impose appropriate disciplinary action.

(e) When deemed appropriate, the boards may:

(1) Refer information acquired during a review and evaluation conducted pursuant to subsection (a) of this section to another professional licensing board, law-enforcement agency or other appropriate governmental entity for investigation and criminal or administrative proceedings; and

(2) Postpone any notification, review or part of such a review required by this section if he or she determines that it is necessary to avoid interfering with any pending administrative or criminal investigation into the suspected fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, dispensing or use of a controlled substance.

(f) The Board of Pharmacy and Board of Medicine shall adopt regulations providing for disciplinary action against a health care provider with prescriptive authority for inappropriately

prescribing a controlled substance listed in schedule II, III or IV or violating the provisions of this section and any regulations adopted by the Board of Pharmacy and Board of Medicine pursuant thereto. Such disciplinary action must include, without limitation, requiring the health care provider with prescriptive authority to complete additional continuing education concerning prescribing controlled substances listed in schedules II, III and IV.

(g) If the Board of Pharmacy and Board of Medicine determine from an investigation of a health care provider with prescriptive authority that the health, safety or welfare of the public or any patient served by the health care provider with prescriptive authority is at risk of imminent or continued harm because of the manner in which the health care provider with prescriptive authority prescribed, administered, dispensed or used a controlled substance, the Board of Pharmacy and Board of Medicine may summarily suspend the health care provider with prescriptive authority 's authority to prescribe, administer or dispense a controlled substance listed in schedule II, III or IV pending a determination upon the conclusion of a hearing to consider a formal complaint against the health care provider with prescriptive authority. An order of summary suspension may be issued only by the Board of Pharmacy and Board of Medicine, the presiding officer of the investigative committee of the board that conducted the investigation or the members of the boards who conducted the investigation.

(h) If an order to summarily suspend a health care provider with prescriptive authority's authority to prescribe, administer or dispense a controlled substance listed in schedule II, III or IV is issued pursuant to subsection (a) of this section by the presiding officer of an investigative committee of the Board of Pharmacy and Board of Medicine, or members of the boards, that person shall not participate in any further proceedings of the boards relating to the order.

(i) If the Board of Pharmacy and Board of Medicine, the presiding officer of an investigative committee of the boards or members of the boards issue an order summarily suspending a health care provider with prescriptive authority's authority to prescribe, administer or dispense a controlled substance listed in schedule II, III or IV pursuant to subsection (a) of this section, the

boards shall hold a hearing to consider the formal complaint against the health care provider with prescriptive authority. The Board of Pharmacy and Board of Medicine shall hold the hearing and render a decision concerning the formal complaint within 60 days after the date on which the order is issued, unless the board and the health care provider with prescriptive authority mutually agree to a longer period.

(j) A physician is not subject to disciplinary action solely for prescribing or administering to a patient under his or her care a controlled substance which is listed in schedule II, III, IV or V by the Board of Pharmacy and Board of Medicine if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain, any regulations adopted by the boards pursuant thereto and any other regulations adopted by the Board of Medicine.

(k) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The Board of Pharmacy shall allow reporting of the required information by electronic data transfer where feasible, and where not feasible, on reporting forms promulgated by the board. The information required to be submitted by the provisions of this article shall be required to be filed no more frequently than within 24 hours.

(l) (1) The Board of Pharmacy shall provide for the electronic transmission of the information required to be provided by this article by and through the use of a toll-free telephone line.

(2) A dispenser, who does not have an automated record-keeping system capable of producing an electronic report in the established format may request a waiver from electronic reporting. The request for a waiver shall be made to the Board of Pharmacy in writing and shall be granted if the dispenser agrees in writing to report the data by submitting a completed "Pharmacy Universal Claim Form" as defined by legislative rule.

(m) The Board of Pharmacy and Board of Medicine shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this

section, including hearings and procedural requirements.

NOTE: The purpose of this bill concerns drug overdoses and controlled substances monitoring. The bill requires state director of health or any county or municipal health officer investigate all instances of persons who has suffered or is suspected of having suffered a drug overdose. The bill requires health care providers to report all instances of persons who have suffered or suspected of having suffered a drug overdose to state director of health. The bill requires the Board of Pharmacy to review and evaluate any complaint regarding health care providers with prescriptive authority have or may have issued a fraudulent, illegal, unauthorized or otherwise inappropriate prescription for a schedule II, III or IV controlled substance. The bill establishes requirements. The bill requires hearings. The bill authorizes disciplinary actions be taken. The bill authorizes rulemaking by the state health director, the Board of Pharmacy and Board of Medicine.

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