

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 65**

BY SENATORS WELD, CLINE, AND TAKUBO

[Introduced January 10, 2018; Referred  
to the Committee on Health and Human Resources; and  
then to the Committee on 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 to controlled substance monitoring information.

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

**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 of Pharmacy is  
2 confidential and not subject to ~~the provisions of~~ §29B-1-1 *et seq.* of this code or obtainable as  
3 discovery in civil matters absent a court order and is open to inspection only by inspectors and  
4 agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized  
5 by the Superintendent of the West Virginia State Police to have access to the information,  
6 authorized agents of local law-enforcement agencies as members of a federally affiliated drug  
7 task force, authorized agents of the federal Drug Enforcement Administration, duly authorized  
8 agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief  
9 Medical Examiner for use in post-mortem examinations, duly authorized agents of the Office of  
10 Health Facility Licensure and Certification for use in certification, licensure and regulation of health  
11 facilities, duly authorized agents of licensing boards of practitioners in this state and other states  
12 authorized to prescribe Schedules II, III and IV controlled substances, prescribing practitioners  
13 and pharmacists, a dean of any medical school or his or her designee located in this state to  
14 access prescriber level data to monitor prescribing practices of faculty members, prescribers and  
15 residents enrolled in a degree program at the school where he or she serves as dean, a physician  
16 reviewer designated by an employer of medical providers to monitor prescriber level information  
17 of prescribing practices of physicians, advance practice registered nurses or physician assistant  
18 in their employ, and a chief medical officer of a hospital or a physician designated by the chief  
19 executive officer of a hospital who does not have a chief medical officer, for prescribers who have  
20 admitting privileges to the hospital or prescriber level information, and persons with an

21 enforceable court order or regulatory agency administrative subpoena. All law-enforcement  
22 personnel who have access to the Controlled Substances Monitoring Program database shall be  
23 granted access in accordance with applicable state laws and the Board of Pharmacy's rules, shall  
24 be certified as a West Virginia law-enforcement officer and shall have successfully completed  
25 training approved by the Board of Pharmacy. All information released by the Board of Pharmacy  
26 must be related to a specific patient or a specific individual or entity under investigation by any of  
27 the above parties except that practitioners who prescribe or dispense controlled substances may  
28 request specific data related to their Drug Enforcement Administration controlled substance  
29 registration number or for the purpose of providing treatment to a patient: *Provided*, That the West  
30 Virginia Controlled Substances Monitoring Program Database Review Committee established in  
31 subsection (b) of this section is authorized to query the database to comply with ~~said~~ that  
32 subsection.

33 (2) Notwithstanding the provisions of subdivision (1) of this subsection, upon receipt of a  
34 request from a medical director or a pharmacy director of a managed care organization that has  
35 entered into a contract with the Department of Health and Human Resources under §9-2-6(5) of  
36 this code, the board shall provide to the medical director or the pharmacy director information  
37 from the database relating to a Medicaid recipient enrolled in the managed care organization,  
38 including information in the database related to prescriptions for the recipient that were not  
39 covered or reimbursed under a program administered by the Bureau for Medical Services:  
40 *Provided*, That the board may promulgate rules to safeguard information relating to Medicaid  
41 recipients enrolled in Medicaid provided to managed care organizations under this subsection.

42 ~~(2)~~ (3) Subject to the provisions of subdivision (1) of this subsection, the Board of  
43 Pharmacy shall also review the West Virginia Controlled Substance Monitoring Program database  
44 and issue reports that identify abnormal or unusual practices of patients who exceed parameters  
45 as determined by the advisory committee established in this section. The Board of Pharmacy shall  
46 communicate with practitioners and dispensers to more effectively manage the medications of

47 their patients in the manner recommended by the advisory committee. All other reports produced  
48 by the Board of Pharmacy shall be kept confidential. The Board of Pharmacy shall maintain the  
49 information required by this article for a period of not less than five years. Notwithstanding any  
50 other provisions of this code to the contrary, data obtained under the provisions of this article may  
51 be used for compilation of educational, scholarly or statistical purposes, and may be shared with  
52 the West Virginia Department of Health and Human Resources for those purposes, as long as  
53 the identities of persons or entities and any personally identifiable information, including protected  
54 health information, contained therein shall be redacted, scrubbed or otherwise irreversibly  
55 destroyed in a manner that will preserve the confidential nature of the information. No individual  
56 or entity required to report under §60A-9-4 of this code may be subject to a claim for civil damages  
57 or other civil relief for the reporting of information to the Board of Pharmacy as required under and  
58 in accordance with the provisions of this article.

59 ~~(3)~~ (4) The Board of Pharmacy shall establish an advisory committee to develop,  
60 implement and recommend parameters to be used in identifying abnormal or unusual usage  
61 patterns of patients in this state. This advisory committee shall:

62 (A) Consist of the following members: A physician licensed by the West Virginia Board of  
63 Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed  
64 by the West Virginia Board of Osteopathic Medicine, a licensed physician certified by the  
65 American Board of Pain Medicine, a licensed physician board certified in medical oncology  
66 recommended by the West Virginia State Medical Association, a licensed physician board  
67 certified in palliative care recommended by the West Virginia Center on End of Life Care, a  
68 pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the  
69 West Virginia Academy of Family Physicians, an expert in drug diversion and such other members  
70 as determined by the Board of Pharmacy.

71 (B) Recommend parameters to identify abnormal or unusual usage patterns of controlled  
72 substances for patients in order to prepare reports as requested in accordance with subdivision

73 (2) of this subsection.

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

78 (D) Monitor the ability of medical services providers, health care facilities, pharmacists and  
79 pharmacies to meet the 24-hour reporting requirement for the Controlled Substances Monitoring  
80 Program set forth in §60A-9-3 of this code, and report on the feasibility of requiring real-time  
81 reporting.

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

85 (b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring  
86 Program Database Review Committee of individuals consisting of two prosecuting attorneys from  
87 West Virginia counties, two physicians with specialties which require extensive use of controlled  
88 substances and a pharmacist who is trained in the use and abuse of controlled substances. The  
89 review committee may determine that an additional physician who is an expert in the field under  
90 investigation be added to the team when the facts of a case indicate that the additional expertise  
91 is required. The review committee, working independently, may query the database based on  
92 parameters established by the advisory committee. The review committee may make  
93 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns  
94 indicated by outliers in the system or abnormal or unusual usage patterns of controlled  
95 substances by patients which the review committee has reasonable cause to believe necessitates  
96 further action by law enforcement or the licensing board having jurisdiction over the practitioners  
97 or dispensers under consideration. The licensing board having jurisdiction over the practitioner or  
98 dispenser under consideration shall report back to the Board of Pharmacy regarding any findings,

99 investigation or discipline resulting from the findings of the review committee within thirty days of  
100 resolution of any action taken by the licensing board resulting from the information provided by  
101 the Board of Pharmacy. The review committee shall also review notices provided by the chief  
102 medical examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis  
103 whether a practitioner who prescribed or dispensed a controlled substance resulting in or  
104 contributing to the drug overdose may have breached professional or occupational standards or  
105 committed a criminal act when prescribing the controlled substance at issue to the decedent. Only  
106 in those cases in which there is reasonable cause to believe a breach of professional or  
107 occupational standards or a criminal act may have occurred, the review committee shall notify the  
108 appropriate professional licensing agency having jurisdiction over the applicable practitioner or  
109 dispenser and appropriate law-enforcement agencies and provide pertinent information from the  
110 database for their consideration. The number of cases identified shall be determined by the review  
111 committee based on a number that can be adequately reviewed by the review committee. The  
112 information obtained and developed may not be shared except as provided in this article and is  
113 not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovering in civil  
114 matters absent a court order.

115 (c) The Board of Pharmacy is responsible for establishing and providing administrative  
116 support for the advisory committee and the West Virginia Controlled Substances Monitoring  
117 Program Database Review Committee. The advisory committee and the review committee shall  
118 elect a chair by majority vote. Members of the advisory committee and the review committee may  
119 not be compensated in their capacity as members but shall be reimbursed for reasonable  
120 expenses incurred in the performance of their duties.

121 (d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory  
122 committee, in accordance with the provisions of §29A-3-1 *et seq.* of this code. The legislative  
123 rules must include, but shall not be limited to, the following matters:

124 (1) Identifying parameters used in identifying abnormal or unusual prescribing or

125 dispensing patterns;

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

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

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

133 (e) Persons or entities with access to the West Virginia Controlled Substances Monitoring  
134 Program database pursuant to this section may, pursuant to rules promulgated by the Board of  
135 Pharmacy, delegate appropriate personnel to have access to said database.

136 (f) Good faith reliance by a practitioner on information contained in the West Virginia  
137 Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or  
138 declining to prescribe or dispense a Schedule II, III or IV controlled substance shall constitute an  
139 absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing  
140 or declining to prescribe or dispense.

141 (g) A prescribing or dispensing practitioner may notify law enforcement of a patient who,  
142 in the prescribing or dispensing practitioner's judgment, may be in violation of §60A-4-410 of this  
143 code, based on information obtained and reviewed from the controlled substances monitoring  
144 database. A prescribing or dispensing practitioner who makes a notification pursuant to this  
145 subsection is immune from any civil, administrative or criminal liability that otherwise might be  
146 incurred or imposed because of the notification if the notification is made in good faith.

147 (h) Nothing in the article may be construed to require a practitioner to access the West  
148 Virginia Controlled Substances Monitoring Program database except as provided in §60A-9-5a of  
149 this code.

150 (i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled

151 Substance Monitoring Program to the Legislative Oversight Commission on Health and Human  
152 Resources Accountability with recommendations for needed legislation no later than January 1 of  
153 each year.

NOTE: The purpose of this bill is to permit managed care organizations to access controlled substances database information for individuals enrolled in the managed care organization's Medicaid plan.

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