

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 201**

4 (By Senators Laird, Stollings, Foster, Miller, Palumbo, Prezioso,
5 Wills, Yost, Unger, Jenkins, Browning and Snyder)

6 _____
7 [Originating in the Committee on Health and Human Resources;
8 reported February 22, 2012.]
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new article, designated §61-12A-1, §61-12A-2,
14 §61-12A-3, §61-12A-4, §61-12A-5 and §61-12A-6, all relating to
15 the creation of the Unintentional Pharmaceutical Drug Overdose
16 Fatality Review Team under the Office of the Chief Medical
17 Examiner; setting forth legislative findings; setting forth
18 membership of the team and terms of office; setting forth
19 responsibilities of the team; providing for certain actions
20 the team may not take in exercising its duties; providing for
21 an annual report to the Governor and Legislature and its
22 contents; providing for confidentiality of the team's
23 proceedings, records and opinions; setting forth
24 record-keeping requirements; authorizing access to certain
25 records; requiring other state and local agencies to cooperate
26 with the team; and granting rule-making authority.

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

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §61-12A-1, §61-12A-2,
4 §61-12A-3, §61-12A-4, §61-12A-5 and §61-12A-6, all to read as
5 follows:

6 **ARTICLE 12A. UNINTENTIONAL PHARMACEUTICAL DRUG OVERDOSE FATALITY**

7 **REVIEW TEAM.**

8 **§61-12A-1. Legislative findings.**

9 The Legislature finds:

10 (1) That pharmaceutical drug abuse and addiction has become an
11 increasingly serious public health and law enforcement problem
12 throughout the State of West Virginia, affecting the quality of
13 life in the communities in which we live;

14 (2) That the increased and growing number of unintentional
15 overdose deaths associated with the nonmedical use and diversion of
16 pharmaceutical drugs, primarily opioid analgesics, is unacceptable
17 and requires further public policy consideration and action;

18 (3) That problems related to pharmaceutical drug abuse and
19 addiction, the nonmedical use and diversion of pharmaceutical
20 drugs, and unintentional pharmaceutical drug overdose deaths are
21 complex problems requiring multidisciplinary review, study and
22 planning to assist in the identification and further development of
23 public policies intended to address these problems in the future.

24 **§61-12A-2. Unintentional Pharmaceutical Drug Overdose Fatality**

25 **Review Team.**

1 (a) The Unintentional Pharmaceutical Drug Overdose Fatality
2 Review Team is hereby created under the Office of the Chief Medical
3 Examiner. The Unintentional Pharmaceutical Drug Overdose Fatality
4 Review Team is a multidisciplinary team created to examine, review
5 and analyze the deaths of all persons in the State of West Virginia
6 who die as a result of unintentional prescription or pharmaceutical
7 drug overdoses.

8 (b) The Unintentional Pharmaceutical Drug Overdose Fatality
9 Review Team shall consist of the following members appointed by the
10 Governor:

11 (1) The Chief Medical Examiner in the Bureau for Public Health
12 or his or her designee, who is to serve as the chairperson and who
13 is responsible for calling and coordinating all meetings;

14 (2) The Director of the West Virginia State Board of Pharmacy
15 or his or her designee;

16 (3) The Commissioner of the Bureau for Public Health or his or
17 her designee;

18 (4) The Director of the Division of Vital Statistics or his or
19 her designee;

20 (5) The Superintendent of the West Virginia State Police or
21 his or her designee;

22 (6) One representative who is a physician nominated by the
23 West Virginia State Medical Association. Each appointment of a
24 physician, whether for a full term or to fill a vacancy, is to be
25 made by the Governor from among three nominees selected by the West
26 Virginia State Medical Association;

1 (7) One representative who is a registered nurse nominated by
2 the West Virginia Nurses Association. Each appointment of a
3 registered nurse, whether for a full term or to fill a vacancy, is
4 to be made by the Governor from among three nominees selected by
5 the West Virginia Nurses Association;

6 (8) One representative who is a doctor of osteopathy nominated
7 by the West Virginia Society of Osteopathic Medicine. Each
8 appointment of a doctor of osteopathy, whether for a full term or
9 to fill a vacancy, is to be made by the Governor from among three
10 nominees selected by the West Virginia Society of Osteopathic
11 Medicine;

12 (9) One licensed physician or doctor of osteopathy who
13 practices pain management as a principal part of his or her
14 practice;

15 (10) One representative who is a Doctor of Pharmacy, with a
16 background in prescription drug abuse and diversion nominated by
17 West Virginia Pharmacists Association;

18 (11) One representative who is a licensed counselor nominated
19 by the West Virginia Association of Alcoholism and Drug Abuse
20 Counselors;

21 (12) One representative of the United States Drug Enforcement
22 Administration;

23 (13) One representative who is a prosecuting attorney
24 nominated by the West Virginia Prosecuting Attorneys Institute;

25 (14) A person who is considered an expert in bio-ethics
26 training;

1 (15) One representative who is a licensed dentist nominated by
2 the Board of Dental Examiners. Each appointment of a dentist,
3 whether for a full term or to fill a vacancy, is to be made by the
4 Governor from among three nominees selected by the West Virginia
5 Dental Association; and

6 (16) Any additional persons that the chairperson of the team
7 determines is needed in the review and consideration of a
8 particular case.

9 (c) With respect to all other appointments not specified
10 herein, the Governor may make the appointments without nomination.

11 (d) Each member of the Unintentional Pharmaceutical Drug
12 Overdose Fatality Review Team shall serve for a term of three
13 years, unless otherwise reappointed to a second or subsequent term.
14 Members shall continue to serve until their respective terms expire
15 or until their successors have been appointed.

16 (e) Each member of the Unintentional Pharmaceutical Drug
17 Overdose Fatality Review Team shall serve without additional
18 compensation and may not be reimbursed for any expenses incurred in
19 the discharge of his or her duties under the provisions of this
20 article.

21 **§61-12A-3. Responsibilities of the Unintentional Pharmaceutical**
22 **Drug Overdose Fatality Review Team.**

23 (a) The Unintentional Pharmaceutical Drug Overdose Fatality
24 Review Team shall:

25 (1) Review and analyze all deaths occurring within the State
26 of West Virginia where the cause of death was determined to be due

1 to unintentional pharmaceutical drug overdose, specifically
2 excluding the death of persons suffering from a mortal disease or
3 instances where the manner of the overdose death was suicide;

4 (2) Ascertain and document the trends, patterns and risk
5 factors related to unintentional pharmaceutical drug overdose
6 fatalities occurring within the State of West Virginia;

7 (3) Ascertain and document patterns related to the sale and
8 distribution of pharmaceutical prescriptions by those otherwise
9 licensed to provide said prescriptions, including the application
10 of information included within the Controlled Substances Monitoring
11 Program database kept and maintained by the West Virginia Board of
12 Pharmacy;

13 (4) Develop and implement standards for the uniform and
14 consistent reporting of unintentional pharmaceutical drug overdose
15 deaths by law enforcement or other emergency service responders;
16 and

17 (5) Provide statistical information and analysis regarding the
18 causes of unintentional pharmaceutical drug overdose fatalities.

19 (b) The Unintentional Pharmaceutical Drug Overdose Fatality
20 Review Team, in the exercise of its duties as defined in this
21 section, may not:

22 (1) Call witnesses or take testimony from individuals involved
23 in the investigation of a pharmaceutical drug overdose fatality;

24 (2) Contact a family member of the deceased;

25 (3) Enforce any public health standard or criminal law or
26 otherwise participate in any legal proceeding; or

1 (4) Otherwise take any action which in the determination of a
2 prosecuting attorney or his or her assistants, impairs the ability
3 of the prosecuting attorney, his or her assistants or any
4 law-enforcement officer to perform his or her statutory duties.

5 (c) The Unintentional Pharmaceutical Drug Overdose Fatality
6 Review Team shall submit an annual report to the Governor and to
7 the Legislative Oversight Commission on Health and Human Resources
8 Accountability concerning its activities within the state. The
9 report is due annually on December 1. The report is to include
10 statistical information concerning cases reviewed during the year,
11 trends and patterns concerning these cases, and the team's
12 recommendations to reduce the number of unintentional
13 pharmaceutical drug overdose fatalities in the state.

14 **§61-12A-4. Access to Information; Other agencies of government**
15 **required to cooperate.**

16 (a) Notwithstanding any other provision of this code to the
17 contrary, the Unintentional Pharmaceutical Drug Overdose Fatality
18 Review Team may request information and records as necessary to
19 carry out its responsibilities. Records and information that may
20 be requested under this section include:

21 (1) medical, dental and mental health records;

22 (2) substance abuse records to the extent allowed by federal
23 law; and

24 (3) information and records maintained by any state, county
25 and local government agency, except as provided in subdivision
26 (b) (4) in section three of this article.

1 (b) State, county and local government agencies shall provide
2 the Unintentional Pharmaceutical Drug Overdose Fatality Review Team
3 with any information requested in writing by the team.

4 **§61-12A-5. Confidentiality.**

5 (a) Proceedings, records and opinions of the Unintentional
6 Pharmaceutical Drug Overdose Fatality Review Team are confidential
7 and are not subject to discovery, subpoena or introduction into
8 evidence in any civil or criminal proceeding. Nothing in this
9 section limits or restricts the right to discover or use in any
10 civil or criminal proceeding anything that is available from
11 another source and entirely independent of the proceedings of the
12 Unintentional Pharmaceutical Drug Overdose Fatality Review Team.

13 (b) Members of the Unintentional Pharmaceutical Drug Overdose
14 Fatality Review Team may not be questioned in any civil or criminal
15 proceeding regarding information presented in or opinions formed as
16 a result of a meeting of the team. This subsection does not
17 prevent a member of the Unintentional Pharmaceutical Drug Overdose
18 Fatality Review Team from testifying to information obtained
19 independently of the team or which is public information.

20 (c) Proceedings, records and opinions of the Unintentional
21 Pharmaceutical Drug Overdose Fatality Review Team are exempt from
22 disclosure under the freedom of information act, article one,
23 chapter twenty-nine-b of this code.

24 **§61-12A-6. Rules.**

25 (a) The Office of the Chief Medical Examiner, in consultation
26 with the Unintentional Pharmaceutical Drug Overdose Fatality Review

1 Team, shall propose rules for legislative approval in accordance
2 with article three, chapter twenty-nine-a of this code. Those
3 rules shall include, at a minimum:

4 (1) The standard procedures for the conduct of the
5 Unintentional Pharmaceutical Drug Overdose Fatality Review Team;

6 (2) The processes and protocols for the review and analysis of
7 unintentional pharmaceutical drug overdoses resulting in fatalities
8 of those who were not suffering from mortal diseases shortly before
9 death;

10 (3) The processes and protocols to ensure confidentiality of
11 records obtained by the Unintentional Pharmaceutical Drug Overdose
12 Fatality Review Team; and

13 (4) Such other rules as may be deemed necessary to effectuate
14 the purposes of this article.