

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.