

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 418

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 23, 2017; Referred
to the Committee on Health and Human Resources;
and then to the Committee on Government
Organization]

1 A BILL to repeal §18B-11B-1, §18B-11B-2, §18B-11B-3, §18B-11B-4, §18B-11B-5 and §18B-
2 11B-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-1-2
3 and §16-1-4 of said code; to amend said code by adding thereto a new article, designated
4 §16-1D-1, §16-1D-2, §16-1D-3, §16-1D-4, §16-1D-5, §16-1D-6, §16-1D-7, §16-1D-8 and
5 §16-1D-9; to amend said code by adding thereto a new article, designated §16-1E-1, §16-
6 1E-2, §16-1E-3, §16-1E-4, §16-1E-5 and §16-1E-6; to amend and reenact §16-2-2 and
7 §16-2-11 of said code; to amend said code by adding thereto a new section, designated
8 §18-2-41; to amend said code by adding thereto a new section, designated §21A-1-9; to
9 amend said code by adding thereto a new section, designated §60A-4-414; to amend and
10 reenact §60A-9-3, §60A-9-4, §60A-9-5, §60A-9-5a, §60A-9-6 and §60A-9-7 of said code,
11 all relating to the Comprehensive Substance Use Reduction Act, a comprehensive
12 response to the state's opioid drug crisis; amending the definition of "basic public health
13 services" to include "harm reduction"; creating the Office of Drug Control Policy;
14 authorizing approval and certification of harm reduction programs; authorizing the State
15 Health Officer to engage in an examination of prescribing and treatment of persons
16 suffering a fatal or nonfatal opiate overdose; authorizing the State Health Officer, in
17 conjunction with the Office of Drug Control Policy, to develop guidelines for prescribing
18 opioids for acute pain; authorizing pilot projects for prevention and treatment services for
19 low-income, pregnant substance abusers; prioritizing pregnant women for substance use
20 disorder treatment referrals; establishing a duty for health care providers to encourage
21 counseling and treatment of pregnant women suffering from substance use disorder;
22 prohibiting the filing of a petition to terminate parental rights when a pregnant woman
23 initiates drug abuse treatment; requiring the Secretary of the Department of Health and
24 Human Resources to establish and maintain an unused prescription drug disposal
25 program; continuing the West Virginia Poison Control Center under the supervision and
26 direction of the State Health Officer; requiring the Department of Education and the Bureau

27 for Public Health to develop a comprehensive health education curriculum for grades K
28 through 12; authorizing the State Board of Education to adopt the comprehensive health
29 education curriculum developed by the Bureau for Public Health for grades K through 12;
30 requiring the creation of a liaison position in WorkForce West Virginia to coordinate
31 employment services for persons seeking substance use disorder treatment; requiring
32 WorkForce West Virginia to develop a pilot project to foster collaboration between
33 employers and organizations providing substance use disorder treatment; prohibiting the
34 prosecution of persons who disclose the possession of a hypodermic needle or syringe
35 containing any minuscule or residual controlled substance to law enforcement or other
36 first responders; continuing the Controlled Substance Monitoring Program under the
37 supervision and direction of the Office of Drug Control Policy; and authorizing the
38 secretary to propose legislative rules, including the promulgation of emergency rules.

Be it enacted by the Legislature of West Virginia:

1 That §18B-11B-1, §18B-11B-2, §18B-11B-3, §18B-11B-4, §18B-11B-5 and §18B-11B-6
2 of the Code of West Virginia, 1931, as amended, be repealed; that §16-1-2 and §16-1-4 of said
3 code be amended and reenacted; that said code be amended by adding thereto a new article,
4 designated §16-1D-1, §16-1D-2, §16-1D-3, §16-1D-4, §16-1D-5, §16-1D-6, §16-1D-7, §16-1D-8
5 and §16-1D-9; that said code be amended by adding thereto a new article, designated §16-1E-1,
6 §16-1E-2, §16-1E-3, §16-1E-4, §16-1E-5 and §16-1E-6; that §16-2-2 and §16-2-11 of said code
7 be amended and reenacted; that said code be amended by adding thereto a new section,
8 designated §18-2-41; that said code be amended by adding thereto a new section, designated
9 §21A-1-9; that said code be amended by adding thereto a new section, designated §60A-4-414;
10 that §60A-9-3, §60A-9-4, §60A-9-5, §60A-9-5a, §60A-9-6 and §60A-9-7 of said code be amended
11 and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

1 As used in this article:

2 (1) "Basic public health services" means those services that are necessary to protect the
3 health of the public. The three areas of basic public health services are communicable and
4 reportable disease prevention and control including, services and policies that lessen the adverse
5 consequences of drug use and protect public health, community health promotion and
6 environmental health protection;

7 (2) "Bureau" means the Bureau for Public Health in the department;

8 (3) "Combined local board of health" means one form of organization for a local board of
9 health and means a board of health serving any two or more counties or any county or counties
10 and one or more municipalities within or partially within the county or counties;

11 (4) "Commissioner" means the Commissioner of the Bureau, who is the state health
12 officer;

13 (5) "County board of health" means one form of organization for a local board of health
14 and means a local board of health serving a single county;

15 (6) "Department" means the West Virginia Department of Health and Human Resources;

16 (7) "Director" or "director of health" means the state health officer. Administratively within
17 the department, the bureau through its commissioner carries out the public health functions of the
18 department, unless otherwise assigned by the secretary;

19 (8) "Essential public health services" means the core public health activities necessary to
20 promote health and prevent disease, injury and disability for the citizens of the state. The services
21 include:

22 (A) Monitoring health status to identify community health problems;

23 (B) Diagnosing and investigating health problems and health hazards in the community;

24 (C) Informing, educating and empowering people about health issues;

25 (D) Mobilizing community partnerships to identify and solve health problems;

26 (E) Developing policies and plans that support individual and community health efforts;

27 (F) Enforcing laws and rules that protect health and ensure safety;

28 (G) Uniting people with needed personal health services and assuring the provision of

29 health care when it is otherwise not available;

30 (H) Promoting a competent public health and personal health care workforce;

31 (I) Evaluating the effectiveness, accessibility and quality of personal and population-based

32 health services; and

33 (J) Researching for new insights and innovative solutions to health problems;

34 (9) "Harm reduction" means a program that provides services, including syringe exchange

35 programs, medical care, counseling and the coordination of homeless services or drug treatment,

36 to individuals at risk of experiencing an opiate-related drug overdose event or to the friends and

37 family members of an at-risk individual.

38 ~~(9)~~ (10) "Licensing boards" means those boards charged with regulating an occupation,

39 business or profession and on which the commissioner serves as a member;

40 ~~(10)~~ (11) "Local board of health", "local board" or "board" means a board of health serving

41 one or more counties or one or more municipalities or a combination thereof;

42 ~~(11)~~ (12) "Local health department" means the staff of the local board of health;

43 ~~(12)~~ (13) "Local health officer" means the physician with a current West Virginia license to

44 practice medicine who supervises and directs the activities, services, staff and facilities of the

45 local health department and is appointed by the local board of health with approval by the

46 commissioner;

47 ~~(13)~~ (14) "Municipal board of health" means one form of organization for a local board of

48 health and means a board of health serving a single municipality;

49 ~~(14)~~ (15) "Performance-based standards" means generally accepted, objective standards
50 such as rules or guidelines against which public health performance can be measured;

51 ~~(15)~~ (16) "Potential source of significant contamination" means a facility or activity that
52 stores, uses or produces substances or compounds with potential for significant contaminating
53 impact if released into the source water of a public water supply;

54 ~~(16)~~ (17) "Program plan" or "plan of operation" means the annual plan for each local board
55 of health that must be submitted to the commissioner for approval;

56 ~~(17)~~ (18) "Public groundwater supply source" means a primary source of water supply for
57 a public water system which is directly drawn from a well, underground stream, underground
58 reservoir, underground mine or other primary source of water supplies which is found underneath
59 the surface of the state;

60 ~~(18)~~ (19) "Public surface water supply source" means a primary source of water supply for
61 a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments
62 or other primary sources of water supplies which are found on the surface of the state;

63 ~~(19)~~ (20) "Public surface water influenced groundwater supply source" means a source of
64 water supply for a public water system which is directly drawn from an underground well,
65 underground river or stream, underground reservoir or underground mine, and the quantity and
66 quality of the water in that underground supply source is heavily influenced, directly or indirectly,
67 by the quantity and quality of surface water in the immediate area;

68 ~~(20)~~ (21) "Public water system" means:

69 (A) Any water supply or system which regularly supplies or offers to supply water for
70 human consumption through pipes or other constructed conveyances, if serving at least an
71 average of twenty-five individuals per day for at least sixty days per year, or which has at least
72 fifteen service connections, and shall include:

73 (i) Any collection, treatment, storage and distribution facilities under the control of the
74 owner or operator of the system and used primarily in connection with the system; and

75 (ii) Any collection or pretreatment storage facilities not under such control which are used
76 primarily in connection with the system;

77 (B) A public water system does not include a system which meets all of the following
78 conditions:

79 (i) Consists only of distribution and storage facilities and does not have any collection and
80 treatment facilities;

81 (ii) Obtains all of its water from, but is not owned or operated by, a public water system
82 which otherwise meets the definition;

83 (iii) Does not sell water to any person; and

84 (iv) Is not a carrier conveying passengers in interstate commerce;

85 ~~(24)~~ (22) "Public water utility" means a public water system which is regulated by the West
86 Virginia Public Service Commission pursuant to the provisions of chapter twenty-four of this code;

87 ~~(22)~~ (23) "Secretary" means the secretary of the department.

88 ~~(23)~~ (24) "Service area" means the territorial jurisdiction of a local board of health;

89 ~~(24)~~ (25) "State Advisory Council on Public Health" means the advisory body charged by
90 this article with providing advice to the commissioner with respect to the provision of adequate
91 public health services for all areas in the state;

92 ~~(25)~~ (26) "State Board of Health" means the secretary, notwithstanding any other provision
93 of this code to the contrary, whenever and wherever in this code there is a reference to the State
94 Board of Health;

95 ~~(26)~~ (27) "Zone of critical concern" for a public surface water supply is a corridor along
96 streams within a watershed that warrant more detailed scrutiny due to its proximity to the surface
97 water intake and the intake's susceptibility to potential contaminants within that corridor. The zone
98 of critical concern is determined using a mathematical model that accounts for stream flows,
99 gradient and area topography. The length of the zone of critical concern is based on a five-hour
100 time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below

101 the water intake. The width of the zone of critical concern is one thousand feet measured
102 horizontally from each bank of the principal stream and five hundred feet measured horizontally
103 from each bank of the tributaries draining into the principal stream.

§16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose rules in accordance with the provisions of article three,
2 chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of
3 this chapter. The secretary may appoint or designate advisory councils of professionals in the
4 areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental
5 health and intellectual disability centers and any other areas necessary to advise the secretary
6 on rules.

7 (b) The rules may include, but are not limited to, the regulation of:

8 (1) Land usage endangering the public health: *Provided*, That no rules may be
9 promulgated or enforced restricting the subdivision or development of any parcel of land within
10 which the individual tracts, lots or parcels exceed two acres each in total surface area and which
11 individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet
12 even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total
13 surface area, and which tracts are sold, leased or utilized only as single-family dwelling units.
14 Notwithstanding the provisions of this subsection, nothing in this section may be construed to
15 abate the authority of the department to:

16 (A) Restrict the subdivision or development of a tract for any more intense or higher density
17 occupancy than a single-family dwelling unit;

18 (B) Propose or enforce rules applicable to single-family dwelling units for single-family
19 dwelling unit sanitary sewerage disposal systems; or

20 (C) Restrict any subdivision or development which might endanger the public health, the
21 sanitary condition of streams or sources of water supply;

22 (2) The sanitary condition of all institutions and schools, whether public or private, public

23 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open
24 to the general public and inviting public patronage or public assembly, or tendering to the public
25 any item for human consumption and places where trades or industries are conducted;

26 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources
27 of water supply, sewerage facilities and plumbing systems and the qualifications of personnel
28 connected with any of those facilities, without regard to whether the supplies or systems are
29 publicly or privately owned; and the design of all water systems, plumbing systems, sewerage
30 systems, sewage treatment plants, excreta disposal methods and swimming pools in this state,
31 whether publicly or privately owned;

32 (4) Safe drinking water, including:

33 (A) The maximum contaminant levels to which all public water systems must conform in
34 order to prevent adverse effects on the health of individuals and, if appropriate, treatment
35 techniques that reduce the contaminant or contaminants to a level which will not adversely affect
36 the health of the consumer. The rule shall contain provisions to protect and prevent contamination
37 of wellheads and well fields used by public water supplies so that contaminants do not reach a
38 level that would adversely affect the health of the consumer;

39 (B) The minimum requirements for: Sampling and testing; system operation; public
40 notification by a public water system on being granted a variance or exemption or upon failure to
41 comply with specific requirements of this section and rules promulgated under this section; record
42 keeping; laboratory certification; as well as procedures and conditions for granting variances and
43 exemptions to public water systems from state public water systems rules; and

44 (C) The requirements covering the production and distribution of bottled drinking water
45 and may establish requirements governing the taste, odor, appearance and other consumer
46 acceptability parameters of drinking water;

47 (5) Food and drug standards, including cleanliness, proscription of additives, proscription
48 of sale and other requirements in accordance with article seven of this chapter as are necessary

49 to protect the health of the citizens of this state;

50 (6) The training and examination requirements for emergency medical service attendants
51 and emergency medical care technician-paramedics; the designation of the health care facilities,
52 health care services and the industries and occupations in the state that must have emergency
53 medical service attendants and emergency medical care technician-paramedics employed and
54 the availability, communications and equipment requirements with respect to emergency medical
55 service attendants and to emergency medical care technician-paramedics. Any regulation of
56 emergency medical service attendants and emergency medical care technician- paramedics may
57 not exceed the provisions of article four-c of this chapter;

58 (7) The health and sanitary conditions of establishments commonly referred to as bed and
59 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment
60 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may
61 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer
62 rooms to install a restaurant-style or commercial food service facility. The secretary may not
63 require an owner of a bed and breakfast providing sleeping accommodations of more than six
64 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast
65 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

66 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,
67 laboratory service fees, environmental health service fees, health facility fees and permit fees;

68 (9) The collection of data on health status, the health system and the costs of health care;

69 (10) The prevention and treatment of substance use disorder necessary to implement the
70 duties of the Office of Drug Control Policy authorized by section twenty of this article; and

71 (11) Clean syringe exchange programs operated by local boards of health pursuant to
72 section twenty of this article, including standards, practices and operational requirements. A local
73 board of health, including the local health officer, operating a clean syringe exchange program in
74 compliance with a legislative rule promulgated in accordance with this subdivision is immune from

75 any civil or criminal liability arising out of any act or omission resulting from the clean syringe
76 exchange program unless the act or omission was the result of gross negligence or willful
77 misconduct. The Legislature finds that for the purposes of section fifteen, article three, chapter
78 twenty-nine-a of this code, an emergency exists requiring the promulgation of an emergency rule
79 to preserve the public peace, health, safety or welfare and to prevent substantial harm to the
80 public interest.

81 (c) The secretary shall propose a rule for legislative approval in accordance with the
82 provisions of article three, chapter twenty-nine-a of this code for the distribution of state aid to
83 local health departments and basic public health services funds.

84 The rule shall include the following provisions:

85 Base allocation amount for each county;

86 Establishment and administration of an emergency fund of no more than two percent of
87 the total annual funds of which unused amounts are to be distributed back to local boards of health
88 at the end of each fiscal year;

89 A calculation of funds utilized for state support of local health departments;

90 Distribution of remaining funds on a per capita weighted population approach which
91 factors coefficients for poverty, health status, population density and health department
92 interventions for each county and a coefficient which encourages counties to merge in the
93 provision of public health services;

94 A hold-harmless provision to provide that each local health department receives no less
95 in state support for a period of four years beginning in the 2009 budget year.

96 The Legislature finds that an emergency exists and, therefore, the secretary shall file an
97 emergency rule to implement the provisions of this section pursuant to the provisions of section
98 fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is subject to the prior
99 approval of the Legislative Oversight Commission on Health and Human Resources
100 Accountability prior to filing with the Secretary of State.

101 (d) The secretary may propose rules for legislative approval that may include the
102 regulation of other health-related matters which the department is authorized to supervise and for
103 which the rule-making authority has not been otherwise assigned.

ARTICLE 1D. SUBSTANCE USE DISORDER PREVENTION.

§16-1D-1. Office of Drug Control Policy.

1 (a) The Office of Drug Control Policy is hereby created within the Department of Health
2 and Human Resources under the direction of the secretary and supervision of the State Health
3 Officer.

4 (b) The Office of Drug Policy shall coordinate, with bureaus of the department and other
5 state agencies, in all matters relating to the research, execution of drug control policy, and for the
6 management of state and federal grants, including, but not limited to, the prevention and treatment
7 related to substance use disorder. This oversight shall extend to all substance use disorder
8 programs which are principally related to the prevention or treatment, or otherwise targeted at the
9 reduction, of substance use disorder in the state.

10 (c) The Office of Drug Control Policy shall:

11 (1) Develop a strategic plan to reduce the prevalence of drug and alcohol abuse and
12 smoking among both the youth and adult populations in West Virginia;

13 (2) Monitor the data and issues related to youth alcohol and tobacco access, substance
14 use disorder policies, and smoking cessation and prevention and their impact on state and local
15 programs, and their flexibility to adapt to the needs of local communities and service providers;

16 (3) Make policy recommendations to be followed to the extent permitted by budgetary
17 restrictions and federal law, by executive branch agencies that work with alcohol and substance
18 use disorder issues and smoking cessation and prevention to ensure the greatest efficiency in
19 agencies and to ensure that a consistency in philosophy will be applied to all efforts undertaken
20 by the administration in initiatives related to alcohol and substance use disorder, and smoking
21 cessation and prevention;

22 (4) Identify existing resources and prevention activities in each community that advocate
23 or implement emerging best practice and evidence-based programs for the full substance use
24 disorder continuum of drug and alcohol abuse education and prevention, including smoking
25 cessation or prevention, early intervention, treatment and recovery;

26 (5) Encourage coordination among public and private, state and local, agencies,
27 organizations and service providers and monitor related programs;

28 (6) Act as the referral source of information, utilizing existing information clearinghouse
29 resources within the Department for Health and Human Resources, relating to emerging best
30 practice and evidence-based substance use disorder prevention, cessation, treatment and
31 recovery programs, and youth tobacco access, smoking cessation and prevention. The Office of
32 Drug Control Policy will identify gaps in information referral sources;

33 (7) Search for grant opportunities for existing programs within the state;

34 (8) Make recommendations to state and local agencies and local substance use disorder
35 and tobacco addiction advisory and coordination boards;

36 (9) Observe programs from other states;

37 (10) Coordinate services among local and state agencies, including, but not limited to, the
38 Secretary of Health and Human Resources, the Department of Military Affairs and Public Safety,
39 the Department of Agriculture, the Department of Education, and the Administrative Office of the
40 Courts;

41 (11) Assure the availability of training, technical assistance and consultation to local
42 service providers for programs funded by the state that provide services related to alcohol,
43 substance use disorder, tobacco addiction, smoking cessation or prevention;

44 (12) Review existing research on programs related to substance use disorder, prevention
45 and treatment, smoking cessation and prevention;

46 (13) Comply with any federal mandate regarding substance use disorder, smoking
47 cessation and prevention, to the extent authorized by state law;

48 (14) Establish a mechanism to coordinate the distribution of funds to support any local
49 prevention, treatment and education program based on the strategic plan developed by the office
50 that could encourage smoking cessation and prevention through efficient, effective, and research-
51 based strategies;

52 (15) Oversee a school-based initiative that links schools with community-based agencies
53 and health departments to implement school-based antidrug and antitobacco programs;

54 (16) Work with community-based organizations to encourage them to work together to
55 establish comprehensive substance use disorder and prevention tobacco addiction education
56 programs and carry out the strategic plan developed in this section. These organizations shall be
57 encouraged to partner with local health departments and community mental health centers to plan
58 and implement interventions to reach youths before substance use disorder and tobacco addiction
59 become a problem in their lives;

60 (17) Coordinate media campaigns designed to demonstrate the negative impact of
61 substance use disorder, smoking and the increased risk of tobacco addiction and the
62 development of other disease in children, young people and adults;

63 (18) Review Drug Enforcement Agency (DEA) scheduling of controlled drugs and
64 recommend changes that should be made based on data analysis.

65 (19) Propose, with the approval of the Secretary of the Department of Health and Human
66 Resources, any legislative rules necessary to implement the provisions of this section; and

67 (20) Report annually to the Legislature and Governor regarding the proper organization of
68 state government agencies that will provide the greatest coordination of services and report
69 semiannually to the Legislature and Governor on the status of the Office of Drug Control Policy,
70 and Department of Health and Human Resources programs, services and grants, and on other
71 matters as requested by the Legislature and Governor.

72 (d) The Office of Drug Control Policy shall promote the implementation of research-based
73 strategies that target the state's youth and adult populations.

§16-1D-2. Harm Reduction Programs.

1 (a) Persons, including local boards of health, who propose to establish or maintain
2 programs that provide services intended to lessen the adverse consequences of drug use and
3 protect public health, also known as harm reduction programs, must be approved and certified by
4 the commissioner.

5 (b) The commissioner shall propose, with the approval of the secretary, legislative rules in
6 accordance with the provisions of article three, chapter twenty-nine-a of this code that are
7 necessary and proper to effectuate the purposes of this section.

8 (c) Each proposed harm reduction program shall, at a minimum, have the ability to:

9 (1) Provide an injection drug user with the information and the means to protect himself or
10 herself, his or her partner, and his or her family from exposure to blood-borne disease through
11 access to education, sterile injection equipment, voluntary testing for blood-borne diseases and
12 counseling;

13 (2) Services related to provision of education and materials for administration of Naloxone,
14 and the reduction of sexual risk behaviors, including, but not limited to, the distribution of
15 condoms;

16 (3) Provide thorough referrals to facilitate entry into drug abuse treatment, including opioid
17 substitution therapy;

18 (4) Provide HIV or hepatitis screening, Hepatitis A and Hepatitis B vaccination and
19 screening for sexually transmitted infections;

20 (5) Provide family planning services or referrals to family planning services;

21 (6) Encourage usage of medical care and mental health services as well as social welfare
22 and health promotion;

23 (7) Provide safety protocols and classes for the proper handling and disposal of injection
24 materials;

25 (8) Plan and implement the clean syringe exchange program with the clear objective of

26 reducing the transmission of blood-borne diseases within a specific geographic area;

27 (9) Develop a timeline for the proposed program and for the development of policies and
28 procedures; and

29 (10) Develop an education program that encourages participants to always disclose their
30 possession of hypodermic needles or syringes to peace officers or emergency medical
31 technicians, paramedics or other first responders prior to a search.

32 (d) Prior to approving and certifying any such program, the commissioner shall require any
33 person who proposes to establish or maintain a harm reduction program to consult with interested
34 stakeholders concerning the establishment of the program. Interested stakeholders shall include,
35 but need not be limited to, local law-enforcement agencies, prosecuting attorneys, substance
36 abuse treatment providers, persons in recovery, nonprofit organizations, hepatitis C, HIV
37 advocacy organizations and members of the community. The board and interested stakeholders
38 shall consider, at a minimum, the following issues:

39 (1) The scope of the problem being addressed and the population the program would
40 serve;

41 (2) Concerns of the law enforcement community; and

42 (3) The parameters of the proposed program, including methods for identifying program
43 workers and volunteers.

44 (e) A person operating a harm reduction program in compliance with a legislative rule
45 promulgated in accordance with this section is immune from any civil or criminal liability arising
46 out of any act or omission resulting from the harm reduction program unless the act or omission
47 was the result of gross negligence or willful misconduct.

48 (f) The Legislature finds that for the purposes of section fifteen, article three, chapter
49 twenty-nine-a of this code, an emergency exists requiring the promulgation of an emergency rule
50 to preserve the public peace, health, safety or welfare and to prevent substantial harm to the
51 public interest.

§16-1D-3. Study of prescribing and treatment of persons suffering a fatal or nonfatal opiate overdoses.

1 (a) The State Health Officer shall conduct or provide for an examination of the prescribing
2 and treatment history, including court-ordered treatment or treatment within the criminal justice
3 system, of persons in the state who suffered fatal or nonfatal opiate overdoses in calendar years
4 2013 to 2015, inclusive. Any report or supplemental reports resulting from this examination shall
5 provide any data in an aggregate and de-identified format.

6 (b) Notwithstanding any other provision of this code to the contrary, to facilitate the
7 examination, the State Health Officer may request, and the relevant offices and agencies shall
8 provide, information necessary to complete the examination from the Department of Health and
9 Human Resources, the Department of Military Affairs and Public Safety, the Department of
10 Administration, the Administrator of Courts, which may include, but not limited to: Data from the
11 prescription drug monitoring program; the all-payer claims database; the criminal offender record
12 information database; and the court activity record information. Not later than one year from the
13 effective date of this section, the State Health Officer shall publish a report on the findings of the
14 examination including, but not limited to:

15 (1) Instances of multiple provider episodes, meaning a single patient having access to
16 opiate prescriptions from more than one provider;

17 (2) Instances of poly-substance access, meaning a patient having simultaneous
18 prescriptions for an opiate and a benzodiazepine or for an opiate and another drug which may
19 enhance the effects or the risks of drug abuse or overdose;

20 (3) The overall opiate prescription history of the individuals, including whether the
21 individuals had access to legal prescriptions for opiate drugs at the time of their deaths;

22 (4) Whether the individuals had previously undergone voluntary or involuntary treatment
23 for substance addiction or behavioral health;

24 (5) Whether the individuals had attempted to enter but were denied access to treatment

25 for substance addiction or behavioral health;

26 (6) Whether the individuals had received past treatment for a substance overdose;

27 (7) Whether any individuals had been previously detained or incarcerated and, if so,
28 whether the individuals had received treatment during the detention or incarceration.

29 (b) The report shall be filed with the President of the Senate, the Speaker of the House of
30 Delegates and the Governor. The State Health Officer may publish supplemental reports on the
31 trends identified through its examination.

32 (c) Notwithstanding any provision of this code to the contrary, the State Health Officer may
33 contract with a nonprofit or educational entity to conduct data analytics on the data set generated
34 in the examination, provided that the State Health Officer implements appropriate privacy
35 safeguards.

§16-1D-4. Development of acute pain treatment guidelines.

1 (a) The State Health Officer, in conjunction with the Office of Drug Policy, may develop
2 guidelines for prescribing opioids for acute pain.

3 (b) Guidelines developed pursuant to this section are intended to improve communication
4 between West Virginia health care providers and their patients about the risks and benefits of
5 opioid therapy for acute pain, improve the safety and effectiveness of pain treatment, and reduce
6 the risks associated with long-term opioid therapy, including opioid use disorder and overdose.
7 The guidelines shall include recommendations for the use of opioids for management of pain that
8 are intended to balance the benefits of use against the risks to the individual and society, and to
9 be useful to practitioners.

10 (c) Guidelines developed pursuant to this section are not intended for patients who are in
11 active cancer treatment, palliative care, or end-of-life care.

§16-1D-5. Pilot projects for prevention and treatment services for low-income, pregnant
substance abusers.

1 (a) The Secretary of the Department of Health and Human Resources may, through grants

2 contracted with community based agencies, plan, establish and administer pilot projects to
3 develop effective and efficient prevention and treatment services for low-income, pregnant
4 substance abusers. Each of the pilot projects should, to the extent possible within available
5 funding, provide the following:

6 (1) Public information programs culturally appropriate to the target populations, such
7 information programs to include brochures, public service announcements and other creative and
8 effective means of communication;

9 (2) Community outreach, interagency liaison, interagency referral mechanisms and
10 specialized training for maternal and child health providers;

11 (3) Residential beds dedicated exclusively for rehabilitation of low income, pregnant
12 substance abusers;

13 (4) Intensive, outpatient slots dedicated exclusively for treatment of low income, pregnant
14 substance abusers;

15 (5) Family intervention services throughout the term of the pregnancy and during a period
16 of postpartum follow-up;

17 (6) Specialized support services needed to ensure effectiveness of rehabilitation and
18 treatment, including, but not necessarily limited to, transportation services and day care;

19 (7) Enhanced physician oversight of treatment modalities, to be provided at a level
20 prescribed by the Secretary; and

21 (8) Documentation and recordkeeping sufficient to enable the secretary to objectively and
22 systematically evaluate the effectiveness and efficiency of the various components of the pilot
23 projects.

24 (b) The secretary may utilize funding from the federal government, as well as other public
25 and private funding sources for substance use disorder prevention and treatment programs.

26 Implementation of the pilot projects shall be limited to the level of funding and resources obtained
27 and provided for that purpose.

§16-1D-6. Prioritizing pregnant women for substance use disorder referrals.

1 (a) A pregnant woman referred for drug abuse or drug dependence treatment at any
2 treatment resource that receives public funding shall be a priority user of available treatment.

3 (b) All records and reports regarding such pregnant woman shall be kept confidential.

4 (c) The Department of Health and Human Resources, Bureau for Behavioral Health and
5 Health Facilities shall ensure that family-oriented drug abuse or drug dependence treatment is
6 available, as appropriations allow.

7 (d) A treatment resource that receives public funds may not refuse to treat a person solely
8 because the person is pregnant as long as appropriate services are offered by the treatment
9 resource.

§16-1D-7. Establishment of a duty for health care providers encourage counseling and treatment.

1 If during prenatal care, an attending obstetrical health care provider determines that a
2 patient has used prescription drugs which may place the fetus in jeopardy, and drug abuse or
3 drug dependence treatment is indicated, the provider shall encourage counseling, drug abuse or
4 drug dependence treatment and other assistance to the patient.

§16-1D-8. Initiation of treatment provides immunity against petitions for parental termination.

1 If a pregnant woman initiates drug abuse or drug dependence treatment based upon a
2 clinical assessment prior to her next regularly scheduled prenatal visit and maintains compliance
3 with both drug abuse or drug dependence treatment based on a clinical assessment as well as
4 prenatal care throughout the remaining term of the pregnancy, then neither the Secretary of the
5 Department of Health and Human Resources nor a prosecuting attorney may file any petition to
6 terminate the mother's parental rights or otherwise seek protection of the newborn solely because
7 of the patient's use of prescription drugs for nonmedical purposes during the term of her
8 pregnancy: *Provided*, That nothing may prevent the Bureau for Children and Families from filing

9 a petition to terminate the mother's parental rights or seek protection of the newborn should the
10 secretary determine that the newborn's mother, or any other adult caring for the newborn, is unfit
11 to properly care for such child.

§16-1D-9. Unused prescription drug disposal program.

1 The Secretary of the Department of Health and Human Resources shall establish and
2 maintain a statewide unused prescription drug disposal program to provide for the safe disposal
3 of state residents' unused and unwanted prescription drugs. The program may include
4 establishing secure collection and disposal sites and providing medication envelopes for sending
5 unused prescription drugs to an authorized collection facility for destruction.

ARTICLE 1E. WEST VIRGINIA POISON CENTER.

§16-1E-1. Intent.

1 The Legislature hereby finds that the current level of scientific information regarding the
2 chemicals, hazardous and noxious substances, biochemical agents, toxic household products
3 and various combinations of them that lead to human poisoning with the added risks associated
4 with criminal activity and clandestine terrorism involving toxic materials and agents requires the
5 immediate availability of accurate information, resources and services to assess toxic threats to
6 the public, prevent human poisoning and assist the general public, the police, firefighters, public
7 health officials, emergency service workers, health care providers and other first responding
8 emergency personnel.

9 It is the intent of the Legislature that poison control services be provided throughout the
10 state on a consistent and prompt basis by any and all electronic means as well as by a toll free
11 telephone network in order that illness or death that may result from the exposure of an individual
12 to poisonous substances may be avoided.

13 The Legislature further finds that effective poison control, not only saves lives and protects
14 the public welfare but also reduces emergency medical costs and is considered an essential
15 emergency service.

§16-1E-2. West Virginia Poison Center continued.

1 (a) The West Virginia Poison Center (hereinafter referred to as "the Center") is hereby
2 continued as a Division of the Office of Drug Control Policy under the supervision and direction of
3 the State Health Officer.

4 (b) The Center shall be certified by the American Association of Poison Control Centers
5 and remain in good standing with that organization; and

6 (c) The Center shall employ a board certified toxicologist.

§16-1E-3. Advisory Board.

1 (a) There is hereby created the West Virginia Poison Center Advisory Board (hereinafter
2 referred to as the board). The board shall be composed of seven members. The members include:
3 the Secretary of the Department of Military Affairs and Public Safety or his or her designee; the
4 State Health Officer or his or her designee; the Associate Vice President of West Virginia
5 University, Health Sciences Center, West Virginia University, Charleston, West Virginia, who shall
6 be chairman of the board; the President of the West Virginia Hospital Association or his or her
7 designee; two members appointed by the State Health Officer who shall represent professional
8 health care organizations in this state with extensive experience in public health education,
9 research or administration; and one member appointed by the State Health Officer to represent
10 the general public. All appointed members shall serve terms of four years and may be
11 reappointed. Appointed members of the advisory board shall serve without compensation, but
12 may be reimbursed for any necessary and reasonable expenses incurred in attending meetings
13 on the same basis as members of the Legislature are reimbursed for expenses.

14 (b) The board shall provide advice and assistance to the center in providing services as
15 set forth in this article. The board shall meet not less than two times each year on the call of the
16 chair. Not later than July 1 of each year, the board shall prepare an annual report for the calendar
17 year for submission to the Governor and the Legislature. The report shall include an analysis of
18 the activities of the Center and any recommendations for improvement the board may deem

19 necessary or appropriate.

§16-1E-4. Center responsibilities.

1 The center shall provide:

2 (1) Twenty-four hour, seven days a week emergency telephone management and
3 treatment referral of victims of poisoning to include determining whether treatment can be
4 accomplished at the scene of the incident or transport to an emergency treatment or other facility
5 is required and carrying out telephone follow-up to families and other individuals to assure that
6 adequate care is provided;

7 (2) Emergency telephone treatment recommendations for all types of poisonings,
8 chemical exposures, drug overdoses and exposure to weapons of mass destruction. This
9 information shall be provided to medical and nonmedical providers;

10 (3) Telephone follow-up for hospitalized and nonhospitalized patients to assess progress
11 and recommend additional treatment as necessary;

12 (4) Surveillance of human poison exposures. This includes those related chemicals, drugs,
13 biologicals and weapons of mass destruction;

14 (5) Community education in poison prevention; and

15 (6) Education in the recognition and management of poisonings for health care providers.

§16-1E-5 Maintenance and reporting of data.

1 (a) The center shall document poison prevention and control cases using nationally
2 recognized standards for data elements and documenting.

3 (b) The center shall maintain, at a minimum, the following data:

4 (1) Data regarding the incidence of both human exposure to poison and other cases
5 handled;

6 (2) The incidence of each reason for exposure in accordance with nationally recognized
7 standards for data elements and documenting procedures;

8 (3) The percentage of accidental exposure cases managed over the telephone as

9 compared to the percentage referred for medical treatment; and

10 (4) The percentage of intentional exposure cases managed over the telephone as
11 compared to the percentage referred for medical, psychiatric or other treatment or management.

§16-1E-6. Immunity of center and staff.

1 Employees of the center may not be deemed to be a member of any patient treatment
2 team, or acting in concert with any responsible treating entity, including emergency personnel,
3 hospital or clinic employees, or private medical practitioners of any health care treatment team.

4 Employees of the center are immune from any and all liability arising from the good faith
5 provision of services provided under the provisions of this article. The immunity granted by this
6 section is in addition to any other immunity now existing or granted under any other provision of
7 this code or by common law.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (a) "Basic public health services" means those services that are necessary to protect the
4 health of the public and that a local board of health must provide. The three areas of basic public
5 health services are communicable and reportable disease prevention and control including,
6 services and policies that lessen the adverse consequences of drug use and protect public health,
7 community health promotion, and environmental health protection;

8 (b) "Bureau" means the Bureau for Public Health in the Department of Health and Human
9 Resources;

10 (c) "Clinical and categorical programs" means those services provided to individuals of
11 specified populations and usually focus on health promotion or disease prevention. These
12 services are not considered comprehensive health care but focus on specific health issues such
13 as breast and cervical cancer, prenatal and pediatric health services and home health services;

14 (d) "Combined local board of health" is one form of organization for a local board of health
15 and means a board of health serving any two or more counties or any county or counties and one
16 or more municipalities within or partially within the county or counties;

17 (e) "Commissioner" means the Commissioner of the Bureau for Public Health, who is the
18 state health officer;

19 (f) "Communicable and reportable disease prevention and control" is one of three areas
20 of basic public health services each local board of health must offer. Services shall include
21 disease surveillance, case investigation and follow-up, outbreak investigation, response to
22 epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine
23 preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable diseases;

24 (g) "Community health promotion" is one of three areas of basic public health services
25 each local board of health must offer. Services shall include assessing and reporting community
26 health needs to improve health status, facilitating community partnerships including identifying
27 the community's priority health needs, mobilization of a community around identified priorities,
28 and monitoring the progress of community health education services;

29 (h) "County board of health" is one form of organization for a local board of health and
30 means a local board of health serving a single county;

31 (i) "Department" means the West Virginia Department of Health and Human Resources;

32 (j) "Director" or "director of health" means the state health officer. Administratively within
33 the department, the Bureau for Public Health through its commissioner carries out the public
34 health function of the department, unless otherwise assigned by the secretary;

35 (k) "Environmental health protection" is one of three areas of basic public health services
36 each local board of health must offer. Services shall include efforts to protect the community from
37 environmental health risks including, inspection of housing, institutions, recreational facilities,
38 sewage and wastewater facilities; inspection and sampling of drinking water facilities; and
39 response to disease outbreaks or disasters;

40 (l) "Enhanced public health services" means services that focus on health promotion
41 activities to address a major health problem in a community, are targeted to a particular population
42 and assist individuals in this population to access the health care system, such as lead and radon
43 abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services
44 are services a local health department may offer;

45 (m) "Harm reduction" means a program that provides services, including syringe exchange
46 programs, medical care, counseling and the coordination of homeless services or drug treatment,
47 to individuals at risk of experiencing an opiate-related drug overdose event or to the friends and
48 family members of an at-risk individual.

49 ~~(m)~~ (n) "Local board of health," "local board" or "board" means a board of health serving
50 one or more counties or one or more municipalities or a combination thereof;

51 ~~(n)~~ (o) "Local health department" means the staff of the local board of health;

52 ~~(o)~~ (p) "Local health officer" means the individual physician with a current West Virginia
53 license to practice medicine who supervises and directs the activities of the local health
54 department services, staff and facilities and is appointed by the local board of health with approval
55 by the commissioner;

56 ~~(p)~~ (q) "Municipal board of health" is one form of organization for a local board of health
57 and means a board of health serving a single municipality;

58 ~~(q)~~ (r) "Performance-based standards" means generally accepted, objective standards
59 such as rules or guidelines against which a local health department's level of performance can be
60 measured;

61 ~~(r)~~ (s) "Primary care services" means health care services, including medical care, that
62 emphasize first contact patient care and assume overall and ongoing responsibility for the patient
63 in health maintenance and treatment of disease. Primary care services are services that local
64 boards of health may offer if the board has determined that an unmet need for primary care
65 services exists in its service area. Basic public health services funding may not be used to support

66 these services;

67 ~~(s)~~ (t) "Program plan" or "plan of operation" means the annual plan for each local board of
68 health that must be submitted to the commissioner for approval;

69 ~~(t)~~ (u) "Secretary" means the Secretary of the State Department of Health and Human
70 Resources; and

71 ~~(u)~~ (v) "Service area" means the territorial jurisdiction of the local board of health.

§16-2-11. Local board of health; powers and duties.

1 (a) Each local board of health created, established and operated pursuant to the
2 provisions of this article shall:

3 (1) Provide the following basic public health services and programs in accordance with
4 state public health performance-based standards:

5 (i) Community health promotion including assessing and reporting community health
6 needs to improve health status, facilitating community partnerships including identifying the
7 community's priority health needs, mobilization of a community around identified priorities and
8 monitoring the progress of community health education services;

9 (ii) Environmental health protection including the promoting and maintaining of clean and
10 safe air, water, food and facilities and the administering of public health laws as specified by the
11 commissioner as to general sanitation, the sanitation of public drinking water, sewage and
12 wastewater, food and milk, and the sanitation of housing, institutions and recreation; and

13 (iii) Communicable or reportable disease prevention and control including disease
14 surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and
15 prevention and control of rabies, sexually transmitted diseases, drug use harm reduction, vaccine
16 preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable diseases;

17 (2) Appoint a local health officer to serve at the will and pleasure of the local board of
18 health with approval of the commissioner;

19 (3) Submit a general plan of operation to the commissioner for approval, if it receives any

20 state or federal money for health purposes. This program plan shall be submitted annually and
21 comply with provisions of the local board of health standards administrative rule;

22 (4) Provide equipment and facilities for the local health department that are in compliance
23 with federal and state law;

24 (5) Permit the commissioner to act by and through it, as needed. The commissioner may
25 enforce all public health laws of this state, the rules and orders of the secretary, any county
26 commission orders or municipal ordinances of the board's service area relating to public health,
27 and the rules and orders of the local board within the service area of a local board. The
28 commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner,
29 a public health emergency exists or when the local board fails or refuses to enforce public health
30 laws and rules necessary to prevent and control the spread of a communicable or reportable
31 disease dangerous to the public health. The expenses incurred shall be charged against the
32 counties or municipalities concerned;

33 (6) Deposit all moneys and collected fees into an account designated for local board of
34 health purposes. The moneys for a municipal board of health shall be deposited with the municipal
35 treasury in the service area. The moneys for a county board of health shall be deposited with the
36 county treasury in the service area. The moneys for a combined local board of health shall be
37 deposited in an account as designated in the plan of combination: *Provided*, That nothing
38 contained in this subsection is intended to conflict with the provisions of article one, chapter
39 sixteen of this code;

40 (7) Submit vouchers or other instruments approved by the board and signed by the local
41 health officer or designated representative to the county or municipal treasurer for payment of
42 necessary and reasonable expenditures from the county or municipal public health funds:
43 *Provided*, That a combined local board of health shall draw upon its public health funds account
44 in the manner designated in the plan of combination;

45 (8) Participate in audits, be in compliance with tax procedures required by the state and

46 annually develop a budget for the next fiscal year;

47 (9) Perform public health duties assigned by order of a county commission or by municipal
48 ordinance consistent with state public health laws; and

49 (10) Enforce the public health laws of this state and any other laws of this state applicable
50 to the local board.

51 (b) Each local board of health created, established and operated pursuant to the
52 provisions of this article may:

53 (1) Provide primary care services, clinical and categorical programs, and enhanced public
54 health services;

55 (2) Employ or contract with any technical, administrative, clerical or other persons, to serve
56 as needed and at the will and pleasure of the local board of health. Staff and any contractors
57 providing services to the board shall comply with applicable West Virginia certification and
58 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the
59 Division of Personnel under section six, article ten, chapter twenty-nine of this code. However,
60 any local board of health may, in the alternative and with the consent and approval of the
61 appointing authority, establish and adopt a merit system for its eligible employees. The merit
62 system may be similar to the state merit system and may be established by the local board by its
63 order, subject to the approval of the appointing authority, adopting and making applicable to the
64 local health department all, or any portion of any order, rule, standard, or compensation rate in
65 effect in the state merit system as may be desired and as is properly applicable;

66 (3) Adopt and promulgate and from time to time amend rules consistent with state public
67 health laws and the rules of the West Virginia State Department of Health and Human Resources,
68 that are necessary and proper for the protection of the general health of the service area and the
69 prevention of the introduction, propagation and spread of disease. All rules shall be filed with the
70 clerk of the county commission or the clerk or the recorder of the municipality or both and shall
71 be kept by the clerk or recording officer in a separate book as public records;

72 (4) Accept, receive and receipt for money or property from any federal, state or local
73 governmental agency, from any other public source or from any private source, to be used for
74 public health purposes or for the establishment or construction of public health facilities;

75 (5) Assess, charge and collect fees for permits and licenses for the provision of public
76 health services: *Provided*, That permits and licenses required for agricultural activities may not be
77 assessed, charged or collected: *Provided, however*, That a local board of health may assess,
78 charge and collect all of the expenses of inspection of the physical plant and facilities of any
79 distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization
80 facilities are located outside this state but who sells or distributes in the state, or transports,
81 causes or permits to be transported into this state, milk or milk products for resale, use or
82 consumption in the state and in the service area of the local board of health. A local board of
83 health may not assess, charge and collect the expenses of inspection if the physical plant and
84 facilities are regularly inspected by another agency of this state or its governmental subdivisions
85 or by an agency of another state or its governmental subdivisions certified as an approved
86 inspection agency by the commissioner. No more than one local board of health may act as the
87 regular inspection agency of the physical plant and facilities; when two or more include an
88 inspection of the physical plant and facilities in a regular schedule, the commissioner shall
89 designate one as the regular inspection agency;

90 (6) Assess, charge and collect fees for services provided by the local health department:
91 *Provided*, That fees for services shall be submitted to and approved by the commissioner:
92 *Provided, however*, That a local health department may bill health care service fees to a payor
93 which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization and the
94 Public Employees Insurance Agency for medical services provided: *Provided* further, That health
95 care service fees billed by a local health department are not subject to commissioner approval
96 and may be at the payor's maximum allowable rate.

97 (7) Contract for payment with any municipality, county or board of education for the

98 provision of local health services or for the use of public health facilities. Any contract shall be in
 99 writing and permit provision of services or use of facilities for a period not to exceed one fiscal
 100 year. The written contract may include provisions for annual renewal by agreement of the parties;
 101 and

102 (8) Retain and make available child safety car seats, collect rental and security deposit
 103 fees for the expenses of retaining and making available child safety car seats, and conduct public
 104 education activities concerning the use and preventing the misuse of child safety car seats:
 105 *Provided*, That this subsection is not intended to conflict with the provisions of section forty-six,
 106 article fifteen, chapter seventeen-c of this code: *Provided, however*, That any local board of health
 107 offering a child safety car seat program or employee or agent of a local board of health is immune
 108 from civil or criminal liability in any action relating to the improper use, malfunction or inadequate
 109 maintenance of the child safety car seat and in any action relating to the improper placement,
 110 maintenance or securing of a child in a child safety car seat.

111 (c) The local boards of health are charged with protecting the health and safety, as well
 112 as promoting the interests of the citizens of West Virginia. All state funds appropriated by the
 113 Legislature for the benefit of local boards of health shall be used for provision of basic public
 114 health services.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-41. Department of Education and the Bureau for Public Health to develop a comprehensive health education curriculum.

1 (a) Notwithstanding any provision of this code to the contrary, the West Virginia
 2 Department of Education and the West Virginia Bureau for Public Health shall cooperate in the
 3 development of a comprehensive health education curriculum for students enrolled in grades
 4 kindergarten through twelve.

5 (b) The state board may adopt the comprehensive health education curriculum developed
6 by the department of education and the bureau for public health pursuant to subsection (a) for
7 grades kindergarten through twelve.

8 (c) For the purpose of this section, "comprehensive health education" means health
9 education in a school setting that is planned and carried out with the purpose of maintaining,
10 reinforcing, or enhancing the health, health-related skills, and health attitudes and practices of
11 children and youth that are conducive to their good health and that promote wellness, health
12 maintenance, disease and substance use disorder prevention, and that includes, but is not limited
13 to, community health, consumer health, environmental health, growth and development,
14 nutritional health, personal health, prevention and control of diseases and disorders, safety and
15 accident prevention, substance use and abuse, dental health, mental and emotional health.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§21A-1-9. Creation of liaison to coordinate employment services for persons currently seeking substance use disorder treatment.

1 (a) The Executive Director of Work Force West Virginia shall create a liaison position to
2 facilitate coordination between Workforce West Virginia, the Department of Health and Human
3 Resources, Bureau for Behavioral Health and Health Facilities, and drug treatment providers to
4 coordinate employment services for persons currently seeking substance use disorder treatment.

5 (b) The Executive Director of work Force West Virginia, in coordination with the
6 Department of Health and Human Resources, and drug treatment providers shall develop a pilot
7 project to foster collaboration between employers and organizations providing substance use
8 disorder treatment, mental health and social services, literacy and job training, work experience
9 and placement services utilizing:

10 (1) Screening and assessment for employment, treatment and mental health;

- 11 (2) Individual plan for recovery and employment;
- 12 (3) A case manager to monitor progress in recovery and employment;
- 13 (4) Job seeking, job retention and job promotion activities, including orientation to work,
 14 on-the-job experiences, job clubs, a work portfolio and job development;
- 15 (5) Life skills development, including time, stress and money management,
 16 communication, appearance and grooming;
- 17 (6) Literacy and vocational services; and
- 18 (7) Counseling sessions focusing on both recovery and employability.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-414. Protection of law-enforcement and first responders from needlestick injuries.

1 (a) Prior to searching a person, a person's premises, or a person's vehicle, a law-
 2 enforcement officer may ask the person whether the person is in possession of a hypodermic
 3 needle or syringe that may cut or puncture the officer or whether such a hypodermic needle or
 4 syringe is on the premises or in the vehicle to be searched. If a hypodermic needle or syringe is
 5 on the person, on the person's premises, or in the person's vehicle and the person, either in
 6 response to the officer's question or voluntarily, alerts the officer of that fact prior to the search,
 7 assessment, or treatment, the peace officer may not arrest or cite the person for any minuscule,
 8 residual controlled substance that may be present in a used hypodermic needle or syringe, and
 9 the prosecuting attorney may not charge or prosecute the person for any minuscule, residual
 10 controlled substance that may be present in a used hypodermic needle or syringe.

11 (b) Prior to assessing or treating a person, an emergency medical technician or other first
 12 responder may ask the person whether the person is in possession of a hypodermic needle or
 13 syringe that may cut or puncture the technician or first responder. If a hypodermic needle or
 14 syringe is on the person, and the person, either in response to the question or voluntarily, alerts

15 the technician or first responder of that fact, a law-enforcement officer may not arrest or cite the
 16 person for any minuscule, residual controlled substance that may be present in a used
 17 hypodermic needle or syringe and the prosecuting attorney may not charge or prosecute the
 18 person for any minuscule, residual controlled substance that may be present in a used
 19 hypodermic needle or syringe.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

1 (a) The ~~Board of Pharmacy~~ Office of Drug Control Policy shall implement a program
 2 wherein a central repository is established and maintained which shall contain such information
 3 as is required by the provisions of this article regarding Schedule II, III, and IV controlled
 4 substance prescriptions written or filled in this state. In implementing this program, the ~~Board of~~
 5 ~~Pharmacy~~ Office of Drug Control Policy shall consult with the West Virginia State Police, the
 6 licensing boards of practitioners affected by this article and affected practitioners.

7 (b) The program authorized by subsection (a) of this section shall be designed to minimize
 8 inconvenience to patients, prescribing practitioners and pharmacists while effectuating the
 9 collection and storage of the required information. The ~~board~~ office shall allow reporting of the
 10 required information by electronic data transfer where feasible, and where not feasible, on
 11 reporting forms promulgated by the board. The information required to be submitted by the
 12 provisions of this article shall be required to be filed no more frequently than within twenty-four
 13 hours.

14 (c) (1) The ~~board~~ office shall provide for the electronic transmission of the information
 15 required to be provided by this article by and through the use of a toll-free telephone line.

16 (2) A dispenser, who does not have an automated record-keeping system capable of
 17 producing an electronic report in the established format may request a waiver from electronic
 18 reporting. The request for a waiver shall be made to the board in writing and shall be granted if

19 the dispenser agrees in writing to report the data by submitting a completed "Pharmacy Universal
20 Claim Form" as defined by legislative rule.

§60A-9-4. Required information.

1 (a) Whenever a medical services provider dispenses a controlled substance listed in
2 Schedule II, III or IV as established under the provisions of article two of this chapter or an opioid
3 antagonist, or whenever a prescription for the controlled substance or opioid antagonist is filled
4 by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for out-
5 patient use; or (iii) a pharmacy or pharmacist licensed by the Board of Pharmacy, but situated
6 outside this state for delivery to a person residing in this state, the medical services provider,
7 health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated
8 by the board under this article, report the following information, as applicable:

9 (1) The name, address, pharmacy prescription number and Drug Enforcement
10 Administration controlled substance registration number of the dispensing pharmacy or the
11 dispensing physician or dentist;

12 (2) The full legal name, address and birth date of the person for whom the prescription is
13 written;

14 (3) The name, address and Drug Enforcement Administration controlled substances
15 registration number of the practitioner writing the prescription;

16 (4) The name and national drug code number of the Schedule II, III and IV controlled
17 substance or opioid antagonist dispensed;

18 (5) The quantity and dosage of the Schedule II, III and IV controlled substance or opioid
19 antagonist dispensed;

20 (6) The date the prescription was written and the date filled;

21 (7) The number of refills, if any, authorized by the prescription;

22 (8) If the prescription being dispensed is being picked up by someone other than the
23 patient on behalf of the patient, the first name, last name and middle initial, address and birth date

24 of the person picking up the prescription as set forth on the person's government-issued photo
25 identification card shall be retained in either print or electronic form until such time as otherwise
26 directed by rule promulgated by the board; and

27 (9) The source of payment for the controlled substance dispensed.

28 (b) The ~~board~~ Office of Drug Control Policy may prescribe by rule promulgated under this
29 article the form to be used in prescribing a Schedule II, III, and IV substance or opioid antagonist
30 if, in the determination of the ~~board~~ office, the administration of the requirements of this section
31 would be facilitated.

32 (c) Products regulated by the provisions of article ten of this chapter shall be subject to
33 reporting pursuant to the provisions of this article to the extent set forth in said article.

34 (d) Reporting required by this section is not required for a drug administered directly to a
35 patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a
36 patient by a practitioner: *Provided*, That the quantity dispensed by a prescribing practitioner to his
37 or her own patient may not exceed an amount adequate to treat the patient for a maximum of
38 seventy-two hours with no greater than two seventy-two-hour cycles dispensed in any fifteen-day
39 period of time.

40 (e) The Board of Pharmacy shall notify a physician prescribing buprenorphine or
41 buprenorphine/naloxone within sixty days of the availability of an abuse deterrent form of
42 buprenorphine or buprenorphine/naloxone is approved by the Food and Drug Administration as
43 provided in FDA Guidance to Industry. Upon receipt of the notice, a physician may switch their
44 patients using buprenorphine or buprenorphine/naloxone to the abuse deterrent form of the
45 drug.

**§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~~ Office of Drug Control
2 Policy is confidential and not subject to the provisions of chapter twenty-nine-b of this code or

3 obtainable as discovery in civil matters absent a court order and is open to inspection only by
4 inspectors and agents of the ~~board~~ office, members of the West Virginia State Police expressly
5 authorized by the Superintendent of the West Virginia State Police to have access to the
6 information, authorized agents of local law-enforcement agencies as members of a federally
7 affiliated drug task force, authorized agents of the federal Drug Enforcement Administration,
8 authorized agents of the Board of Pharmacy, duly authorized agents of the Bureau for Medical
9 Services, duly authorized agents of the Office of the Chief Medical Examiner for use in post-
10 mortem examinations, duly authorized agents of licensing boards of practitioners in this state and
11 other states authorized to prescribe Schedules II, III and IV controlled substances, prescribing
12 practitioners and pharmacists and persons with an enforceable court order or regulatory agency
13 administrative subpoena: *Provided*, That all law-enforcement personnel who have access to the
14 Controlled Substances Monitoring Program database shall be granted access in accordance with
15 applicable state laws and the ~~board's~~ office's legislative rules, shall be certified as a West Virginia
16 law-enforcement officer and shall have successfully completed training approved by the ~~board~~
17 office. All information released by the ~~board~~ office must be related to a specific patient or a specific
18 individual or entity under investigation by any of the above parties except that practitioners who
19 prescribe or dispense controlled substances may request specific data related to their Drug
20 Enforcement Administration controlled substance registration number or for the purpose of
21 providing treatment to a patient: *Provided, however*, That the West Virginia Controlled Substances
22 Monitoring Program Database Review Committee established in subsection (b) of this section is
23 authorized to query the database to comply with said subsection.

24 (2) Subject to the provisions of subdivision (1) of this subsection, the ~~board~~ office shall
25 also review the West Virginia Controlled Substance Monitoring Program database and issue
26 reports that identify abnormal or unusual practices of patients who exceed parameters as
27 determined by the advisory committee established in this section. The ~~board~~ office shall
28 communicate with practitioners and dispensers to more effectively manage the medications of

29 their patients in the manner recommended by the advisory committee. All other reports produced
30 by the ~~board~~ office shall be kept confidential. The ~~board~~ office shall maintain the information
31 required by this article for a period of not less than five years. Notwithstanding any other provisions
32 of this code to the contrary, data obtained under the provisions of this article may be used for
33 compilation of educational, scholarly or statistical purposes, and may be shared with the West
34 Virginia Department of Health and Human Resources for those purposes, as long as the identities
35 of persons or entities and any personally identifiable information, including protected health
36 information, contained therein shall be redacted, scrubbed or otherwise irreversibly destroyed in
37 a manner that will preserve the confidential nature of the information. No individual or entity
38 required to report under section four of this article may be subject to a claim for civil damages or
39 other civil relief for the reporting of information to the ~~board~~ office as required under and in
40 accordance with the provisions of this article.

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

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~~ office shall create a West Virginia Controlled Substances Monitoring
68 Program Database Review Committee of individuals consisting of two prosecuting attorneys from
69 West 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
78 necessitates further action by law enforcement or the licensing board having jurisdiction over the
79 practitioners or dispensers under consideration. The Review Committee shall also review notices
80 provided by the chief medical examiner pursuant to subsection (h), section ten, article twelve,

81 chapter sixty-one of this code and determine on a case-by-case basis whether a practitioner who
82 prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose
83 may have breached professional or occupational standards or committed a criminal act when
84 prescribing the controlled substance at issue to the decedent. Only in those cases in which there
85 is reasonable cause to believe a breach of professional or occupational standards or a criminal
86 act 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~~ office is responsible for establishing and providing administrative support
95 for the Advisory Committee and the West Virginia Controlled Substances Monitoring Program
96 Database Review Committee. The Advisory Committee and the Review Committee shall elect a
97 chair by majority vote. Members of the Advisory Committee and the Review Committee may not
98 be 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~~ office shall promulgate rules with advice and consent of the Advisory
101 Committee, in accordance with the provisions of article three, chapter twenty-nine-a of this code.
102 The 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 office, 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 hundred
122 ten, article four of this chapter, based on information obtained and reviewed from the controlled
123 substances monitoring database. A prescribing or dispensing practitioner who makes a
124 notification pursuant to this subsection is immune from any civil, administrative or criminal liability
125 that otherwise might be incurred or imposed because of the notification if the notification is made
126 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~~ office shall provide an annual report on the West Virginia Controlled
131 Substance Monitoring Program to the Legislative Oversight Commission on Health and Human

132 Resources Accountability with recommendations for needed legislation no later than January 1 of
133 each year.

**§60A-9-5a. Practitioner requirements to access database and conduct annual search of the
database; required rulemaking.**

1 (a) All practitioners, as that term is defined in section one hundred-one, article two of this
2 chapter who prescribe or dispense Schedule II, III or IV controlled substances shall register with
3 the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or
4 other electronic access to the program database: *Provided*, That compliance with the provisions
5 of this subsection must be accomplished within thirty days of the practitioner obtaining a new
6 license: *Provided, however*, That no licensing board may renew a practitioner's license without
7 proof that the practitioner meet the requirements of this subsection.

8 (b) Upon initially prescribing or dispensing any pain-relieving controlled substance for a
9 patient and at least annually thereafter should the practitioner or dispenser continue to treat the
10 patient with controlled substances, all persons with prescriptive or dispensing authority and in
11 possession of a valid Drug Enforcement Administration registration identification number and,
12 who are licensed by the Board of Medicine as set forth in article three, chapter thirty of this code,
13 the Board of Registered Professional Nurses as set forth in article seven, chapter thirty of this
14 code, the Board of Dental Examiners as set forth in article four, chapter thirty of this code, ~~and~~
15 the Board of Osteopathic Medicine as set forth in article fourteen, chapter thirty of this code and
16 the Board of Pharmacy as set forth in article five, chapter thirty of this code shall access the West
17 Virginia Controlled Substances Monitoring Program database for information regarding specific
18 patients for whom they are providing pain-relieving controlled substances as part of a course of
19 treatment for chronic, nonmalignant pain but who are not suffering from a terminal illness. The
20 information obtained from accessing the West Virginia Controlled Substances Monitoring
21 Program database for the patient shall be documented in the patient's medical record. A pain-
22 relieving controlled substance shall be defined as set forth in section one, article three-a, chapter

23 thirty of this code.

24 (c) The various boards mentioned in subsection (b) of this section above shall
25 promulgate both emergency and legislative rules pursuant to the provisions of article three,
26 chapter twenty-nine-a of this code to effectuate the provisions of this section.

§60A-9-6. Promulgation of rules.

27 The ~~state board of pharmacy~~ Office of Drug Control Policy, with the approval of the
28 Secretary of the Department of Health and Human Resources shall promulgate legislative rules
29 to effectuate the purposes of this article in accordance with the provisions of chapter twenty-nine-
30 a of this code.

§60A-9-7. Criminal penalties; and administrative violations.

1 (a) Any person who is required to submit information to the ~~state Board of Pharmacy West~~
2 Virginia Controlled Substance Monitoring Program pursuant to the provisions of this article who
3 fails to do so as directed by the board is guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined not less than \$100 nor more than \$500.

5 (b) Any person who is required to submit information to the ~~state Board of Pharmacy West~~
6 Virginia Controlled Substance Monitoring Program pursuant to the provisions of this article who
7 knowingly and willfully refuses to submit the information required by this article is guilty of a
8 misdemeanor and, upon conviction thereof, shall be confined in ~~a county or regional~~ jail not more
9 than six months or fined not more than \$1,000, or both confined and fined.

10 (c) Any person who is required by the provisions of this article to submit information to the
11 ~~state Board of Pharmacy West~~ Virginia Controlled Substance Monitoring Program who knowingly
12 submits thereto information known to that person to be false or fraudulent is guilty of a
13 misdemeanor and, upon conviction thereof, shall be confined in ~~a county or regional~~ jail not more
14 than one year or fined not more than \$5,000, or both confined and fined.

15 (d) Any person granted access to the information required by the provisions of this article
16 to be maintained by the ~~state Board of Pharmacy~~ Office of Drug Control Policy, who shall willfully

17 disclose the information required to be maintained by this article in a manner inconsistent with a
18 legitimate law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a
19 court order or as otherwise expressly authorized by the provisions of this article is guilty of a
20 misdemeanor and, upon conviction thereof, shall be confined in ~~a county or regional~~ jail for not
21 more than six months or fined not more than \$1,000, or both confined and fined.

22 (e) Unauthorized access or use or unauthorized disclosure for reasons unrelated to the
23 purposes of this article of the information in the database is a felony punishable by imprisonment
24 in a state correctional facility for not less than one year nor more than five years or fined not less
25 than \$3,000 nor more than \$10,000, or both imprisoned or fined.

26 (f) Any practitioner who fails to register with the West Virginia Controlled Substances
27 Monitoring Program and obtain and maintain online or other electronic access to the program
28 database as required in subsection (a), section five-a, article nine of this chapter, shall be subject
29 to an administrative penalty of \$1,000 by the licensing board of his or her licensure. All such fines
30 collected pursuant to this subsection shall be remitted by the applicable licensing board to the
31 Fight Substance Abuse Fund created under section eight of this article. The provisions of this
32 subsection shall become effective on July 1, 2016.

33 (g) Any practitioner or dispenser who is required to access the information contained in
34 the West Virginia Controlled Substances Monitoring Program database as set forth in subsection
35 (a), section five-a of this article and fails to do so as directed by the rules of his or her licensing
36 board shall be subject to such discipline as the licensing board deems appropriate and on or after
37 July 1, 2016, be subject to a \$100 administrative penalty per violation by the applicable licensing
38 board. All such fines collected pursuant to this subsection shall be transferred by the applicable
39 licensing board to the Fight Substance Abuse Fund created under section eight of this article.

40 (h) Lack of available internet connectivity is a defense to any action brought pursuant to
41 subsections (d) or (f) of this section.

NOTE: The purpose of this bill is to enact a comprehensive plan, based on public health, research and data, to combat the state's opioid drug and substance abuse crisis. This bill creates the centralized Office of Drug Control Policy under the direction of the Secretary of DHHR and the supervision of the State Health Officer, and incorporates the West Virginia Poison Control Center as a division. This role of the office is to coordinate information, resources, programs, and state and federal funds through a centralized office. This bill codifies various public health and education initiatives and pilot programs to prevent and treatment substance abuse, and transfers responsibility of the Controlled Substance Monitoring Program from the Board of Pharmacy to the Office of Drug Control Policy.

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