

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 335**

4 (By Senators Cole (Mr. President) and Kessler,

5 By Request of the Executive)

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7 [Originating in the Committee on Health and Human Resources;

8 reported January 28, 2015.]  
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
13 designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5 and §16-46-6; and to amend  
14 and reenact §30-1-7a of said code, all relating generally to accessing and administering  
15 opioid antagonists in overdose situations; establishing short title; defining terms; establishing  
16 objectives and purpose; allowing licensed health care providers to prescribe opioid antagonist  
17 to initial responders and certain individuals; allowing initial responders to possess and  
18 administer opioid antagonists; providing for limited liability for initial responders; providing  
19 for limited liability for licensed health care providers who prescribe opioid antagonist in  
20 accordance with this article; providing for limited liability for anyone who possesses and  
21 administers an opioid antagonist; establishing responsibility of licensed health care providers  
22 to provide educational materials on overdose prevention and administration of opioid

1 antagonist; providing for data collection and reporting; providing for training requirements;  
2 and providing for rule-making authority.

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

4 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
5 article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5 and §16-46-6; and that §30-1-  
6 7a of said code be amended and reenacted, all to read as follows:

7 **CHAPTER 16. PUBLIC HEALTH.**

8 **ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.**

9 **§16-46-1. Purpose and findings.**

10 (a) The purpose of this article is to prevent deaths in circumstances involving individuals who  
11 have overdosed on opiates.

12 (b) The Legislature finds that permitting licensed health care providers to prescribe opioid  
13 antagonists to initial responders as well as individuals at risk of experiencing an overdose, their  
14 relatives, friends or caregivers may prevent accidental deaths as a result of opiate-related overdoses.

15 **§16-46-2. Definitions.**

16 As used in this article:

17 (1) “Initial responder” means emergency medical service personnel, as defined in subdivision  
18 (g), section three, article four-c of this chapter, including, but not limited to, a member of the West  
19 Virginia State Police, a sheriff, a deputy sheriff, a municipal police officer, a volunteer or paid  
20 firefighter and any other person acting under color of law who responds to emergencies.

21 (2) “Licensed health care provider” means a person, partnership, corporation, professional  
22 limited liability company, health care facility or institution licensed by or certified in this state to

1 provide health care or professional health care services. This includes, but is not limited to, medical  
2 physicians, allopathic and osteopathic physicians, pharmacists, physician assistants or osteopathic  
3 physician assistants who hold a certificate to prescribe drugs, advanced nurse practitioners who hold  
4 a certificate to prescribe drugs, hospitals, emergency service agencies and others as allowed by law  
5 to prescribed drugs.

6 (3) “Opiates” or “opioid drugs” means drugs that are members of the natural and synthetic  
7 opium family, including, but not limited to, heroin, morphine, codeine, methadone, oxycodone,  
8 hydrocodone, fentanyl and hydromorphone.

9 (4) “Opioid antagonist” means a federal Food and Drug Administration-approved drug for  
10 the treatment of an opiate-related overdose, such as naloxone hydrochloride or other substance, that,  
11 when administered, negates or neutralizes, in whole or in part, the pharmacological effects of an opioid  
12 in the body.

13 (5) “Opioid overdose prevention and treatment training program” or “program” means any  
14 program operated or approved by the Office of Emergency Services as set forth in rules promulgated  
15 pursuant to this article.

16 (6) “Overdose” means an acute condition, including, but not limited to, life-threatening  
17 physical illness, coma, mania, hysteria or death, which is the result of the consumption or use of  
18 opioid drugs.

19 (7) “Standing order” means a written document containing rules, policies, procedures,  
20 regulations and orders for the conduct of patient care, including the condition being treated, the  
21 action to be taken and the dosage and route of administration for the drug prescribed.

22 **§16-46-3. Licensed health care providers may prescribe opioid antagonists to initial**

1                   **responders and certain individuals; required educational materials; limited**  
2                   **liability.**

3           (a) All licensed health care providers in the course of their professional practice may offer  
4 to initial responders a prescription for opioid antagonists, including a standing order, to be used  
5 during the course of their professional duties as initial responders.

6           (b) All licensed health care providers in the course of their professional practice may offer  
7 to a person considered by the licensed health care provider to be at risk of experiencing an opiate-  
8 related overdose, or to a relative, friend, caregiver or person in a position to assist a person at risk  
9 of experiencing an opiate-related overdose, a prescription for an opioid antagonist.

10          (c) All licensed health care providers who prescribe an opioid antagonist under this section  
11 shall provide educational materials to any person or entity receiving such a prescription on opiate-  
12 related overdose prevention and treatment programs, as well as materials on administering the  
13 prescribed opioid antagonist.

14          (d) Any person who possesses an opioid antagonist and administers it to a person whom they  
15 believe to be suffering from an opioid-related overdose and who is acting in good faith is not, as a  
16 result of his or her actions or omissions, subject to criminal prosecution arising from the possession  
17 of an opioid antagonist or subject to any civil liability with respect to the administration of or failure  
18 to administer the opioid antagonist unless the act or failure to act was the result of gross negligence  
19 or willful misconduct.

20          (e) Any person who administers an opioid antagonist to a person whom they believe to be  
21 suffering from an opioid-related overdose is required to seek additional medical treatment for that  
22 person immediately following the administration of the opioid antagonist to avoid further

1 complications as a result of suspected opioid-related overdose.

2 **§16-46-4. Possession and administration of an opioid antagonist by an initial responder;**  
3 **limited liability.**

4 (a) An initial responder who is not otherwise authorized to administer opioid antagonists may  
5 possess opioid antagonists in the course of his or her professional duties as an initial responder and  
6 administer an opioid antagonist in an emergency situation if:

7 (1) The initial responder has successfully completed the training required by subsection (b),  
8 section six of this article; and

9 (2) The administration thereof is done after consultation with medical command, as defined  
10 in subdivision (k), section three, article four-c of this chapter: *Provided*, That an initial responder  
11 may administer an opioid antagonist without consulting medical command if he or she is unable to  
12 so consult due to an inability to contact medical command because of circumstances outside the  
13 control of the initial responder or if there is insufficient time for the consultation based upon the  
14 emergency conditions presented.

15 (b) An initial responder who meets the requirements of subsection (a) of this section, acting  
16 in good faith, is not, as a result of his or her actions or omissions, subject to civil liability or criminal  
17 prosecution arising from or relating to the administration of the opioid antagonist unless the actions  
18 or omissions were the result of the initial responder's gross negligence or willful misconduct.

19 **§16-46-5. Licensed health care providers' limited liability related to opioid antagonist**  
20 **prescriptions.**

21 (a) A licensed health care provider who is permitted by law to prescribe drugs, including  
22 opioid antagonists, may, if acting in good faith, prescribe and subsequently dispense or distribute an

1 opioid antagonist without being subject to civil liability or criminal prosecution unless prescribing  
2 the opioid antagonist was the result of the licensed health care provider's gross negligence or willful  
3 misconduct.

4 (b) For purposes of this chapter and chapter sixty-a, any prescription written, as described  
5 in section four of this article, shall be presumed as being issued for a legitimate medical purpose in  
6 the usual course of professional practice unless the presumption is rebutted by a preponderance of  
7 the evidence.

8 **§16-46-6. Data collection and reporting requirements; training.**

9 (a) Beginning March 1, 2016, and annually thereafter the following reports shall be compiled:

10 (1) The Office of Emergency Medical Services shall collect data regarding each  
11 administration of an opioid antagonist by an initial responder. The Office of Emergency Medical  
12 Services shall report this information to the Legislative Oversight Commission on Health and Human  
13 Resources Accountability and the West Virginia Bureau for Behavioral Health and Health Facilities.  
14 The data collected and reported shall include:

15 (A) The number of training programs operating in an Office of Emergency Medical Services-  
16 designated training center;

17 (B) The number of individuals who received training to administer an opioid antagonist;

18 (C) The number of individuals who received an opioid antagonist administered by an initial  
19 responder;

20 (D) The number of individuals who received an opioid antagonist administered by an initial  
21 responder who were revived;

22 (E) The number of individuals who received an opioid antagonist administered by an initial

1 responder who were not revived; and

2 (F) The cause of death of individuals who received an opioid antagonist administered by an  
3 initial responder and were not revived.

4 (2) Each licensed health care provider shall submit data to the West Virginia Board of  
5 Pharmacy by February 1 of each calendar year, excluding any personally identifiable information,  
6 regarding the number of opioid antagonist prescriptions written in accordance with this article in the  
7 preceding calendar year. The licensed health care provider shall indicate whether the prescription  
8 was written to an individual in the following categories: An initial responder; an individual at risk  
9 of opiate-related overdose; a relative of a person at risk of experiencing an opiate-related overdose;  
10 a friend of a person at risk of experiencing an opiate-related overdose; or a caregiver or person in a  
11 position to assist a person at risk of experiencing an opiate-related overdose.

12 (3) The West Virginia Board of Pharmacy shall compile all data described in subdivision (2)  
13 of this section and any additional data maintained by the Board of Pharmacy related to prescriptions  
14 of opioid antagonists. By March 1, the Board of Pharmacy shall provide a report of this information  
15 to the Legislative Oversight Commission on Health and Human Resources Accountability and the  
16 West Virginia Bureau for Behavioral Health and Health Facilities.

17 (b) To implement the provisions of this section, including establishing the standards for  
18 certification and approval of opioid overdose prevention and treatment training programs and  
19 protocols regarding a refusal to transport, the Office of Emergency Medical Services may promulgate  
20 emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of  
21 this code and may propose rules for legislative approval in accordance with the provisions of article  
22 three, chapter twenty-nine-a of this code.

1                                   **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

2 **ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF**  
3 **EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**

4 **§30-1-7a. Continuing education.**

5           (a) Each board referred to in this chapter shall establish continuing education requirements  
6 as a prerequisite to license renewal. Each board shall develop continuing education criteria  
7 appropriate to its discipline, which shall include, but not be limited to, course content, course  
8 approval, hours required and reporting periods.

9           (b) Notwithstanding any other provision of this code or the provision of any rule to the  
10 contrary, each person issued a license to practice medicine and surgery or a license to practice  
11 podiatry or licensed as a physician assistant by the West Virginia Board of Medicine, each person  
12 issued a license to practice dentistry by the West Virginia Board of Dental Examiners, each person  
13 issued a license to practice optometry by the West Virginia Board of Optometry, each person  
14 licensed as a pharmacist by the West Virginia Board of Pharmacy, each person licensed to practice  
15 registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia  
16 Board of Examiners for Registered Professional Nurses, each person licensed as a licensed practical  
17 nurse by the West Virginia State Board of Examiners for Licensed Practical Nurses and each person  
18 licensed to practice medicine and surgery as an osteopathic physician and surgeon or licensed or  
19 certified as an osteopathic physician assistant by the West Virginia Board of Osteopathy shall  
20 complete drug diversion training, ~~and~~ best-practice prescribing of controlled substances training and  
21 training on prescribing and administration of an opioid antagonist, as the trainings are established

22 by his or her respective licensing board, if that person prescribes, administers or dispenses a



1 controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a  
2 of this code.

3 (1) Notwithstanding any other provision of this code or the provision of any rule to the  
4 contrary, the West Virginia Board of Medicine, the West Virginia Board of Dental Examiners, the  
5 West Virginia Board of Optometry, the West Virginia Board of Pharmacy, the West Virginia Board  
6 of Examiners for Registered Professional Nurses, the West Virginia State Board of Examiners for  
7 Licensed Practical Nurses and the West Virginia Board of Osteopathy shall establish continuing  
8 education requirements and criteria appropriate to their respective discipline on the subject of drug  
9 diversion training, ~~and~~ best-practice prescribing of controlled substances training and prescribing and  
10 administration of an opioid antagonist training for each person issued a license or certificate by their  
11 respective board who prescribes, administers or dispenses a controlled substance, as that term is  
12 defined in section one hundred one, article one, chapter sixty-a of this code, and shall develop a  
13 certification form pursuant to subdivision (b)(2) of this section.

14 (2) Each person who receives his or her initial license or certificate from any of the boards  
15 set forth in subsection (b) of this section shall complete the continuing education requirements set  
16 forth in subsection (b) of this section within one year of receiving his or her initial license from that  
17 board and each person licensed or certified by any of the boards set forth in subsection (b) of this  
18 section who has held his or her license or certificate for longer than one year shall complete the  
19 continuing education requirements set forth in subsection (b) of this section as a prerequisite to each  
20 license renewal: *Provided*, That a person subject to subsection (b) of this section may waive the  
21 continuing education requirements for license renewal set forth in subsection (b) of this section if  
22 he or she completes and submits to his or her licensing board a certification form developed by his

1 or her licensing board attesting that he or she has not prescribed, administered or dispensed a  
2 controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a  
3 of this code, during the entire applicable reporting period.

4 (c) Notwithstanding any other provision of this code or the provision of any rule to the  
5 contrary, each person licensed to practice registered professional nursing or licensed as an advanced  
6 nurse practitioner by the West Virginia Board of Examiners for Registered Professional Nurses, each  
7 person licensed as a licensed practical nurse by the West Virginia State Board of Examiners for  
8 Licensed Practical Nurses, each person issued a license to practice midwifery as a nurse-midwife by  
9 the West Virginia Board of Examiners for Registered Professional Nurses, each person issued a  
10 license to practice chiropractic by the West Virginia Board of Chiropractic, each person licensed to  
11 practice psychology by the Board of Examiners of Psychologists, each person licensed to practice  
12 social work by the West Virginia Board of Social Work and each person licensed to practice  
13 professional counseling by the West Virginia Board of Examiners in Counseling shall complete two  
14 hours of continuing education for each reporting period on mental health conditions common to  
15 veterans and family members of veterans, as the continuing education is established or approved by  
16 his or her respective licensing board. The two hours shall be part of the total hours of continuing  
17 education required by each board and not two additional hours.

18 (1) Notwithstanding any other provision of this code or the provision of any rule to the  
19 contrary, on or before July 1, 2015, the boards referred to in this subsection shall establish continuing  
20 education requirements and criteria and approve continuing education coursework appropriate to  
21 their respective discipline on the subject of mental health conditions common to veterans and family  
22 members of veterans, in cooperation with the Secretary of the Department of Veterans' Assistance.

1 The continuing education shall include training on inquiring about whether the patients are veterans  
2 or family members of veterans, and screening for conditions such as post-traumatic stress disorder,  
3 risk of suicide, depression and grief and prevention of suicide.

4 (2) On or after July 1, 2017, each person licensed by any of the boards set forth in this  
5 subsection shall complete the continuing education described herein as a prerequisite to his or her  
6 next license renewal.

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(NOTE: The purpose of this bill is to allow initial responders to possess and administer opioid antagonists in suspected opiate-related overdoses; to ensure opioid antagonists are made available to individuals at risk of overdose, as well as to relatives, friends and caregivers of such individuals; and to establish responsibilities for licensed health care providers that prescribe opioid antagonists.

This is a new article; therefore, underscoring and strike-throughs have been omitted.)