

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 660**

BY SENATOR WELD

[Introduced March 18, 2017; Referred  
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §60A-9-5 of the Code of West Virginia, 1931, as amended, relating  
2 to access to controlled substance monitoring information.

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

1 That §60A-9-5 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

### **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

#### **§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.**

1 (a)(1) The information required by this article to be kept by the board is confidential and  
2 not subject to the provisions of chapter twenty-nine-b of this code or obtainable as discovery in  
3 civil matters absent a court order and is open to inspection only by inspectors and agents of the  
4 board, members of the West Virginia State Police expressly authorized by the superintendent of  
5 the West Virginia State Police to have access to the information, authorized agents of local law-  
6 enforcement agencies as members of a federally affiliated drug task force, authorized agents of  
7 the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical  
8 Services, duly authorized agents of the Office of the Chief Medical Examiner for use in post-  
9 mortem examinations, duly authorized agents of licensing boards of practitioners in this state and  
10 other states authorized to prescribe Schedules II, III and IV controlled substances, prescribing  
11 practitioners and pharmacists and persons with an enforceable court order or regulatory agency  
12 administrative subpoena: *Provided*, That all law-enforcement personnel who have access to the  
13 Controlled Substances Monitoring Program database shall be granted access in accordance with  
14 applicable state laws and the board's legislative rules, shall be certified as a West Virginia law-  
15 enforcement officer and shall have successfully completed training approved by the board. All  
16 information released by the board must be related to a specific patient or a specific individual or  
17 entity under investigation by any of the above parties except that practitioners who prescribe or  
18 dispense controlled substances may request specific data related to their Drug Enforcement

19 Administration controlled substance registration number or for the purpose of providing treatment  
20 to a patient: *Provided, however,* That the West Virginia Controlled Substances Monitoring  
21 Program Database Review Committee established in subsection (b) of this section is authorized  
22 to query the database to comply with said subsection.

23 (2) Notwithstanding the provisions of subdivision (1) of this subsection, upon receipt of a  
24 request from a medical director or a pharmacy director of a managed care organization that has  
25 entered into a contract with the Department of Health and Human Resources under subdivision  
26 (5), section six, article two, chapter nine of this code, the board shall provide to the medical  
27 director or the pharmacy director information from the database relating to a Medicaid recipient  
28 enrolled in the managed care organization, including information in the database related to  
29 prescriptions for the recipient that were not covered or reimbursed under a program administered  
30 by the Bureau for Medical Services: *Provided,* That the board may promulgate rules to safeguard  
31 information relating to Medicaid recipients enrolled in Medicaid provided to managed care  
32 organizations under this subsection.

33 ~~(2)~~ (3) Subject to the provisions of subdivision (1) of this subsection, the board shall also  
34 review the West Virginia Controlled Substance Monitoring Program database and issue reports  
35 that identify abnormal or unusual practices of patients who exceed parameters as determined by  
36 the advisory committee established in this section. The board shall communicate with  
37 practitioners and dispensers to more effectively manage the medications of their patients in the  
38 manner recommended by the advisory committee. All other reports produced by the board shall  
39 be kept confidential. The board shall maintain the information required by this article for a period  
40 of not less than five years. Notwithstanding any other provisions of this code to the contrary, data  
41 obtained under the provisions of this article may be used for compilation of educational, scholarly  
42 or statistical purposes, and may be shared with the West Virginia Department of Health and  
43 Human Resources for those purposes, as long as the identities of persons or entities and any  
44 personally identifiable information, including protected health information, contained therein shall

45 be redacted, scrubbed or otherwise irreversibly destroyed in a manner that will preserve the  
46 confidential nature of the information. No individual or entity required to report under section four  
47 of this article may be subject to a claim for civil damages or other civil relief for the reporting of  
48 information to the board as required under and in accordance with the provisions of this article.

49 ~~(3)~~ (4) The board shall establish an advisory committee to develop, implement and  
50 recommend parameters to be used in identifying abnormal or unusual usage patterns of patients  
51 in this state. This advisory committee shall:

52 (A) Consist of the following members: A physician licensed by the West Virginia Board of  
53 Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed  
54 by the West Virginia Board of Osteopathic Medicine, a licensed physician certified by the  
55 American Board of Pain Medicine, a licensed physician board certified in medical oncology  
56 recommended by the West Virginia State Medical Association, a licensed physician board  
57 certified in palliative care recommended by the West Virginia Center on End of Life Care, a  
58 pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the  
59 West Virginia Academy of Family Physicians, an expert in drug diversion and such other members  
60 as determined by the board.

61 (B) Recommend parameters to identify abnormal or unusual usage patterns of controlled  
62 substances for patients in order to prepare reports as requested in accordance with subsection  
63 (a), subdivision (2) of this section.

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

68 (D) Monitor the ability of medical services providers, health care facilities, pharmacists and  
69 pharmacies to meet the twenty-four hour reporting requirement for the Controlled Substances  
70 Monitoring Program set forth in section three of this article, and report on the feasibility of requiring

71 real-time reporting.

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

75 (b) The board shall create a West Virginia Controlled Substances Monitoring Program  
76 Database Review Committee of individuals consisting of two prosecuting attorneys from West  
77 Virginia counties, two physicians with specialties which require extensive use of controlled  
78 substances and a pharmacist who is trained in the use and abuse of controlled substances. The  
79 review committee may determine that an additional physician who is an expert in the field under  
80 investigation be added to the team when the facts of a case indicate that the additional expertise  
81 is required. The review committee, working independently, may query the database based on  
82 parameters established by the advisory committee. The review committee may make  
83 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns  
84 indicated by outliers in the system or abnormal or unusual usage patterns of controlled  
85 substances by patients which the review committee has reasonable cause to believe necessitates  
86 further action by law enforcement or the licensing board having jurisdiction over the practitioners  
87 or dispensers under consideration. The review committee shall also review notices provided by  
88 the chief medical examiner pursuant to subsection (h), section ten, article twelve, chapter sixty-  
89 one of this code and determine on a case-by-case basis whether a practitioner who prescribed or  
90 dispensed a controlled substance resulting in or contributing to the drug overdose may have  
91 breached professional or occupational standards or committed a criminal act when prescribing  
92 the controlled substance at issue to the decedent. Only in those cases in which there is  
93 reasonable cause to believe a breach of professional or occupational standards or a criminal act  
94 may have occurred, the review committee shall notify the appropriate professional licensing  
95 agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-  
96 enforcement agencies and provide pertinent information from the database for their consideration.

97 The number of cases identified shall be determined by the review committee based on a number  
98 that can be adequately reviewed by the review committee. The information obtained and  
99 developed may not be shared except as provided in this article and is not subject to the provisions  
100 of chapter twenty-nine-b of this code or obtainable as discovering in civil matters absent a court  
101 order.

102 (c) The board is responsible for establishing and providing administrative support for the  
103 advisory committee and the West Virginia Controlled Substances Monitoring Program Database  
104 Review Committee. The advisory committee and the review committee shall elect a chair by  
105 majority vote. Members of the advisory committee and the review committee may not be  
106 compensated in their capacity as members but shall be reimbursed for reasonable expenses  
107 incurred in the performance of their duties.

108 (d) The board shall promulgate rules with advice and consent of the advisory committee,  
109 in accordance with the provisions of article three, chapter twenty-nine-a of this code. The  
110 legislative rules must include, but shall not be limited to, the following matters:

111 (1) Identifying parameters used in identifying abnormal or unusual prescribing or  
112 dispensing patterns;

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

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

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

120 (e) Persons or entities with access to the West Virginia Controlled Substances Monitoring  
121 Program database pursuant to this section may, pursuant to rules promulgated by the board,  
122 delegate appropriate personnel to have access to said database.

123 (f) Good faith reliance by a practitioner on information contained in the West Virginia  
124 Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or  
125 declining to prescribe or dispense a schedule II, III, or IV controlled substance shall constitute an  
126 absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing  
127 or declining to prescribe or dispense.

128 (g) A prescribing or dispensing practitioner may notify law enforcement of a patient who,  
129 in the prescribing or dispensing practitioner's judgment, may be in violation of section four hundred  
130 ten, article four of this chapter, based on information obtained and reviewed from the controlled  
131 substances monitoring database. A prescribing or dispensing practitioner who makes a  
132 notification pursuant to this subsection is immune from any civil, administrative or criminal liability  
133 that otherwise might be incurred or imposed because of the notification if the notification is made  
134 in good faith.

135 (h) Nothing in the article may be construed to require a practitioner to access the West  
136 Virginia Controlled Substances Monitoring Program database except as provided in section five-  
137 a of this article.

138 (i) The board shall provide an annual report on the West Virginia Controlled Substance  
139 Monitoring Program to the Legislative Oversight Commission on Health and Human Resources  
140 Accountability with recommendations for needed legislation no later than January 1 of each year.

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

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