

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2752**

BY DELEGATE WILSON AND BIBBY

[Introduced January 30, 2019; 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 adding to the persons who have access to the information kept by the Board of  
3 Pharmacy.

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

**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 of Pharmacy is  
2 confidential and not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as  
3 discovery in civil matters absent a court order and is open to inspection only by inspectors and  
4 agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized  
5 by the Superintendent of the West Virginia State Police to have access to the information,  
6 authorized agents of local law-enforcement agencies as members of a federally affiliated drug  
7 task force, authorized agents of the federal Drug Enforcement Administration, duly authorized  
8 agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief  
9 Medical Examiner for use in post-mortem examinations, duly authorized agents of the Office of  
10 Health Facility Licensure and Certification for use in certification, licensure, and regulation of  
11 health facilities, duly authorized agents of licensing boards of practitioners in this state and other  
12 states authorized to prescribe Schedules II, III, and IV controlled substances, prescribing  
13 practitioners and pharmacists, a licensed healthcare professional who is certified as a medical  
14 examiner with the Federal Motor Carrier Safety Administration, a dean of any medical school or  
15 his or her designee located in this state to access prescriber level data to monitor prescribing  
16 practices of faculty members, prescribers, and residents enrolled in a degree program at the  
17 school where he or she serves as dean, a physician reviewer designated by an employer of  
18 medical providers to monitor prescriber level information of prescribing practices of physicians,  
19 advance practice registered nurses, or physician assistants in their employ, and a chief medical

20 officer of a hospital or a physician designated by the chief executive officer of a hospital who does  
21 not have a chief medical officer, for prescribers who have admitting privileges to the hospital or  
22 prescriber level information, and persons with an enforceable court order or regulatory agency  
23 administrative subpoena. All law-enforcement personnel who have access to the Controlled  
24 Substances Monitoring Program Database shall be granted access in accordance with applicable  
25 state laws and the Board of Pharmacy's rules, shall be certified as a West Virginia law-  
26 enforcement officer and shall have successfully completed training approved by the Board of  
27 Pharmacy. All information released by the Board of Pharmacy must be related to a specific patient  
28 or a specific individual or entity under investigation by any of the above parties except that  
29 practitioners who prescribe or dispense controlled substances may request specific data related  
30 to their Drug Enforcement Administration controlled substance registration number or for the  
31 purpose of providing treatment to a patient: *Provided*, That the West Virginia Controlled  
32 Substances Monitoring Program Database Review Committee established in §30A-9-5(b) of this  
33 code is authorized to query the database to comply with §30A-9-5(b) of this code.

34 (2) Subject to the provisions of §60A-9-5(a)(1) of this code, the Board of Pharmacy shall  
35 also review the West Virginia Controlled Substances Monitoring Program Database and issue  
36 reports that identify abnormal or unusual practices of patients and practitioners with prescriptive  
37 authority who exceed parameters as determined by the advisory committee established in this  
38 section. The Board of Pharmacy shall communicate with practitioners and dispensers to more  
39 effectively manage the medications of their patients in the manner recommended by the advisory  
40 committee. All other reports produced by the Board of Pharmacy shall be kept confidential. The  
41 Board of Pharmacy shall maintain the information required by this article for a period of not less  
42 than five years. Notwithstanding any other provisions of this code to the contrary, data obtained  
43 under the provisions of this article may be used for compilation of educational, scholarly, or  
44 statistical purposes, and may be shared with the West Virginia Department of Health and Human  
45 Resources for those purposes, as long as the identities of persons or entities and any personally

46 identifiable information, including protected health information, contained therein shall be  
47 redacted, scrubbed, or otherwise irreversibly destroyed in a manner that will preserve the  
48 confidential nature of the information. No individual or entity required to report under §60A-9-4 of  
49 this code may be subject to a claim for civil damages or other civil relief for the reporting of  
50 information to the Board of Pharmacy as required under and in accordance with the provisions of  
51 this article.

52 (3) The Board of Pharmacy shall establish an advisory committee to develop, implement,  
53 and recommend parameters to be used in identifying abnormal or unusual usage patterns of  
54 patients and practitioners with prescriptive authority in this state. This advisory committee shall:

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

64 (B) Recommend parameters to identify abnormal or unusual usage patterns of controlled  
65 substances for patients in order to prepare reports as requested in accordance with §60A-9-  
66 5(a)(2) of this code.

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

71 (D) Monitor the ability of medical services providers, health care facilities, pharmacists,

72 and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances  
73 Monitoring Program set forth in §60A-9-3 of this code, and report on the feasibility of requiring  
74 real-time reporting.

75 (E) Establish outreach programs with local law enforcement to provide education to local  
76 law enforcement on the requirements and use of the Controlled Substances Monitoring Program  
77 Database established in this article.

78 (b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring  
79 Program Database Review Committee of individuals consisting of two prosecuting attorneys from  
80 West Virginia counties, two physicians with specialties which require extensive use of controlled  
81 substances and a pharmacist who is trained in the use and abuse of controlled substances. The  
82 review committee may determine that an additional physician who is an expert in the field under  
83 investigation be added to the team when the facts of a case indicate that the additional expertise  
84 is required. The review committee, working independently, may query the database based on  
85 parameters established by the advisory committee. The review committee may make  
86 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns  
87 indicated by outliers in the system or abnormal or unusual usage patterns of controlled  
88 substances by patients which the review committee has reasonable cause to believe necessitates  
89 further action by law enforcement or the licensing board having jurisdiction over the practitioners  
90 or dispensers under consideration. The licensing board having jurisdiction over the practitioner or  
91 dispenser under consideration shall report back to the Board of Pharmacy regarding any findings,  
92 investigation, or discipline resulting from the findings of the review committee within 30 days of  
93 resolution of any action taken by the licensing board resulting from the information provided by  
94 the Board of Pharmacy. The review committee shall also review notices provided by the chief  
95 medical examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis  
96 whether a practitioner who prescribed or dispensed a controlled substance resulting in or  
97 contributing to the drug overdose may have breached professional or occupational standards or

98 committed a criminal act when prescribing the controlled substance at issue to the decedent. Only  
99 in those cases in which there is reasonable cause to believe a breach of professional or  
100 occupational standards or a criminal act may have occurred, the review committee shall notify the  
101 appropriate professional licensing agency having jurisdiction over the applicable practitioner or  
102 dispenser and appropriate law-enforcement agencies and provide pertinent information from the  
103 database for their consideration. The number of cases identified shall be determined by the review  
104 committee based on a number that can be adequately reviewed by the review committee. The  
105 information obtained and developed may not be shared except as provided in this article and is  
106 not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovering in civil  
107 matters absent a court order.

108 (c) The Board of Pharmacy is responsible for establishing and providing administrative  
109 support for the advisory committee and the West Virginia Controlled Substances Monitoring  
110 Program Database Review Committee. The advisory committee and the review committee shall  
111 elect a chair by majority vote. Members of the advisory committee and the review committee may  
112 not be compensated in their capacity as members but shall be reimbursed for reasonable  
113 expenses incurred in the performance of their duties.

114 (d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory  
115 committee, after consultation with the licensing boards set forth in §60A-9-5(d)(4) of this code and  
116 in accordance with the provisions of §29A-3-1 *et seq.* of this code. The Legislature finds that the  
117 changes made to this section during the course of the 2018 regular session of the Legislature  
118 constitutes an emergency and the Board of Pharmacy shall promulgate emergency rules pursuant  
119 to the provisions of §29A-3-15 of this code to incorporate these modifications. The legislative rules  
120 must include, but shall not be limited to, the following matters:

121 (1) Identifying parameters used in identifying abnormal or unusual prescribing or  
122 dispensing patterns;

123 (2) Processing parameters and developing reports of abnormal or unusual prescribing or

124 dispensing patterns for patients, practitioners, and dispensers;

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

127 (4) Dissemination of these reports at least quarterly to:

128 (A) The West Virginia Board of Medicine codified in §30-3-1 *et seq.* of this code;

129 (B) The West Virginia Board of Osteopathic Medicine codified in §30-14-1 *et seq.* of this  
130 code;

131 (C) The West Virginia Board of Examiners for Registered Professional Nurses codified in  
132 §30-7-1 *et seq.* of this code;

133 (D) The West Virginia Board of Dentistry codified in §30-4-1 *et seq.* of this code;

134 (E) The West Virginia Board of Optometry codified in §30-8-1 *et seq.* of this code; and

135 (F) The West Virginia Board of Veterinary Medicine codified in §30-10-1 *et seq.* of this  
136 code; and

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

140 (e) Persons or entities with access to the West Virginia Controlled Substances Monitoring  
141 Program Database pursuant to this section may, pursuant to rules promulgated by the Board of  
142 Pharmacy, delegate appropriate personnel to have access to said database.

143 (f) Good faith reliance by a practitioner on information contained in the West Virginia  
144 Controlled Substances Monitoring Program Database in prescribing or dispensing or refusing or  
145 declining to prescribe or dispense a Schedule II, III, or IV controlled substance shall constitute an  
146 absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing  
147 or declining to prescribe or dispense.

148 (g) A prescribing or dispensing practitioner may notify law enforcement of a patient who,  
149 in the prescribing or dispensing practitioner's judgment, may be in violation of §60A-4-410 of this

150 code, based on information obtained and reviewed from the Controlled Substances Monitoring  
151 Program Database. A prescribing or dispensing practitioner who makes a notification pursuant to  
152 this subsection is immune from any civil, administrative, or criminal liability that otherwise might  
153 be incurred or imposed because of the notification if the notification is made in good faith.

154 (h) Nothing in the article may be construed to require a practitioner to access the West  
155 Virginia Controlled Substances Monitoring Program Database except as provided in §60A-9-5 of  
156 this code.

157 (i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled  
158 Substances Monitoring Program to the Legislative Oversight Commission on Health and Human  
159 Resources Accountability with recommendations for needed legislation no later than January 1 of  
160 each year.

NOTE: The purpose of this bill is to add to the persons who have access to the information kept by the Board of Pharmacy.

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