

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3119

BY DELEGATES MARTIN AND HOWELL

[Introduced March 12, 2021; 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 Controlled Substances Monitoring
3 Database maintained by the Board of 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 qualified examiners with the Federal Motor Carrier Safety Administration to the persons who have access to the Controlled Substances Monitoring Database maintained 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.