WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED

SENATE BILL NO. 239

(By Senator Wooton, et al.)

PASSED April 14, 2001

In Effect July 1, 2001
AN ACT to repeal sections three, four, five, six and seven, article nine, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-nine-b, chapter sixteen of said code by adding thereto five new sections, designated sections six-a, six-b, six-c, six-d and six-e, all relating to the controlled substances monitoring act; transferring the program from the authority of the board of pharmacy to the health care authority; changing the program to a target program; adding Schedule III and Schedule IV controlled substances to the program for targeted monitoring; making the program contingent on funding; requiring annual program reporting; changing the filing time period to no more than once a month; and allowing licensed practitioners to obtain patient information from the health care authority under certain circumstances.

Be it enacted by the Legislature of West Virginia:
That sections three, four, five, six and seven, article nine, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article twenty-nine-b, chapter sixteen of said code be amended by adding thereto five new sections, designated sections six-a, six-b, six-c, six-d and six-e, all to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-6a. Reporting system requirements; implementation; central repository requirement.

1. (a) On or before the first day of May, two thousand two, the health care authority shall implement a program wherein a central repository is established and maintained that contains the information as is required by the provisions of this article regarding Schedule II, Schedule III and Schedule IV controlled substances prescriptions written or filled in this state. In implementing this program, the health care authority shall consult with the West Virginia state police or representative of the federal drug enforcement authority, the licensing boards of practitioners affected by this article and affected practitioners to establish the targeted drugs and the necessary procedures to implement this article.

(b) The program authorized by subsection (a) of this section is to be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The health care authority shall allow reporting of the required information by electronic data transfer where feasible and where not feasible, on reporting forms promulgated by the health care authority. The information required to be submitted by the provisions of this article may be required to be filed no more frequently than once a month.

(c) The program authorized by subsection (a) of this section is also to provide for the reimbursement, in whole or in part, of the costs reasonably and necessarily incurred
by pharmacists or pharmacies in modifying software in
conformance with the reporting requirements of this
article: Provided, That the total expenditures for reim-
bursements shall not exceed twenty-five thousand dollars.
The health care authority is authorized to promulgate an
emergency legislative rule to effectuate the reimbursement
provisions of this section in accordance with the provisions
of chapter twenty-nine-a of this code. The health care
authority shall provide for the electronic transmission of
the information required to be provided by this article by
and through the use of a toll-free telephone line.

(d) The West Virginia state police is authorized to access
information through their West Virginia intelligence
exchange, commonly referred to as "WVIX", as established
by the health care authority.

(e) Operation of the controlled substances monitoring
program is contingent upon available funding from
legislative appropriations, federal grants or fees as autho-
rized by legislative rule.

(f) The health care authority and the West Virginia state
police shall file a report with the Legislature on or before
the first day of January, two thousand three, and annually
thereafter, which is to include information on the effec-
tiveness of the program; the number of substances moni-
tored; the cost of monitoring by classification; the total
number of actions taken as a result of information received
through the program, including, but not limited to,
disciplinary actions, prosecutions and convictions; and any
recommendations for additional modifications to this
program.

§16-29B-6b. Required information.

(a) Whenever a medical services provider dispenses a
controlled substance targeted by the health care authority
or whenever a prescription for the controlled substances is
filled by: (i) A pharmacist or pharmacy in this state; (ii) a
hospital, or other health care facility, for out-patient use;
or (iii) a pharmacy or pharmacist, licensed by the board of
pharmacy, but situated outside this state for delivery to a
person residing in this state, the medical services provider,
health care facility, pharmacist or pharmacy shall, in a
manner prescribed by rules promulgated by the health
care authority under this article, report the following
information, as applicable:

(1) The name, address, pharmacy prescription number
and DEA controlled substance registration number of the
dispensing pharmacy;

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

(3) The name, address and drug enforcement administra-
tion controlled substances registration number of the
practitioner writing the prescription;

(4) The name and national drug code number of the
controlled substance dispensed;

(5) The quantity and dosage of the targeted controlled
substance dispensed;

(6) The date the prescription was filled; and

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

(b) The health care authority may prescribe by rule
promulgated under this article the form to be used in
prescribing a targeted controlled substance if, in the
determination of the health care authority, the administra-
tion of the requirements of this section would be facili-
tated.

§16-29B-6c. Confidentiality; limited access to records; period of
retention; no civil liability for required report-
ing.
The information required by this article to be kept by the health care authority is to be confidential and open to inspection only by the health care authority and employees of the health care authority, members of the West Virginia state police expressly authorized by the superintendent to have access to the information, duly authorized agents of licensing boards of practitioners authorized to prescribe targeted controlled substances and persons with an enforceable court order or regulatory agency administrative subpoena. Licensed practitioners authorized to prescribe or dispense targeted controlled substances may request patient or customer specific information in the possession of the health care authority as authorized by this article relating to past or present use of the targeted controlled substances: Provided, That the practitioner making the request shall certify, in a form required by the health care authority, that the receipt of the information is necessary or advisable to the proper medical care of the patient. Information received by the practitioner pursuant to this section may not be used for any purpose other than the proper medical care of a patient. The health care authority shall maintain the information required by this article for a period of no less than five years. Notwithstanding any provisions of this code, data obtained under the provisions of this article may be used for compilation of educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential. No individual or entity required to report under section four of this article is subject to a claim for civil damages or other civil relief for the reporting of information to the health care authority as required under, and in accordance with, the provisions of this article. All information which contains the identification of individual patients or practitioners or other entities or from which their identities could be derived is not subject to the freedom of information act set forth in article one, chapter twenty-nine-b of this code. No pharmacist licensed under article five, chapter thirty of this code may compound or dispense...
any prescription order which, in his or her professional judgment or opinion, contains any error, irregularity or ambiguity or which, in his or her professional judgment or opinion, may not be issued for a legitimate medical purpose. A pharmacist who refuses to compound or dispense a prescription order pursuant to the provisions of this section has absolute immunity from liability or any cause of action arising out of his or her act of refusal to compound or dispense a prescription.

§16-29B-6d. Promulgation of rules.

The health care authority shall promulgate legislative rules to effectuate the purposes of this article in accordance with the provisions of chapter twenty-nine-a of this code.

§16-29B-6e. Criminal penalties.

(a) Any person who is required to submit information to the health care authority pursuant to the provisions of this article who fails to do so as directed by the health care authority is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

(b) Any person who is required to submit information to the health care authority pursuant to the provisions of this article who knowingly and willfully refuses to submit the information required by this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than six months or fined not more than one thousand dollars, or both.

(c) Any person who is required by the provisions of this article to submit information to the health care authority who knowingly submits information known to that person to be false or fraudulent is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year or fined not more than five thousand dollars, or both.
(d) Any person granted access to the information required by the provisions of this article to be maintained by the health care authority who willfully discloses the information required to be maintained by this article in a manner inconsistent with a legitimate law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a court order or as otherwise expressly authorized by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months or fined not more than one thousand dollars, or both.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill was disapproved this the May Day of 2001.

Governor
PRESENTED TO THE
GOVERNOR

Date

Time