

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 239

(By Senator Wootton, et al)

PASSED April 14, 2001

In Effect July 4, 2001 ~~Passage~~

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Senate Bill No. 239

(BY SENATORS WOOTON, FACEMYER, FANNING,
HUNTER, ROSS, ROWE, SNYDER AND DEEM)

[Passed April 14, 2001; to take 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seven, article nine, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article twenty-nine-b, chapter sixteen of said code be amended by adding thereto five new sections, designated sections six-a, six-b, six-c, six-d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,
2 the health care authority shall implement a program
3 wherein a central repository is established and maintained
4 that contains the information as is required by the provi-
5 sions of this article regarding Schedule II, Schedule III and
6 Schedule IV controlled substances prescriptions written or
7 filled in this state. In implementing this program, the
8 health care authority shall consult with the West Virginia
9 state police or representative of the federal drug enforce-
10 ment authority, the licensing boards of practitioners
11 affected by this article and affected practitioners to
12 establish the targeted drugs and the necessary procedures
13 to implement this article.

14 (b) The program authorized by subsection (a) of this
15 section is to be designed to minimize inconvenience to
16 patients, prescribing practitioners and pharmacists while
17 effectuating the collection and storage of the required
18 information. The health care authority shall allow report-
19 ing of the required information by electronic data transfer
20 where feasible and where not feasible, on reporting forms
21 promulgated by the health care authority. The informa-
22 tion required to be submitted by the provisions of this
23 article may be required to be filed no more frequently than
24 once a month.

25 (c) The program authorized by subsection (a) of this
26 section is also to provide for the reimbursement, in whole
27 or in part, of the costs reasonably and necessarily incurred

28 by pharmacists or pharmacies in modifying software in
29 conformance with the reporting requirements of this
30 article: *Provided*, That the total expenditures for reim-
31 bursements shall not exceed twenty-five thousand dollars.
32 The health care authority is authorized to promulgate an
33 emergency legislative rule to effectuate the reimbursement
34 provisions of this section in accordance with the provisions
35 of chapter twenty-nine-a of this code. The health care
36 authority shall provide for the electronic transmission of
37 the information required to be provided by this article by
38 and through the use of a toll-free telephone line.

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

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

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

§16-29B-6b. Required information.

1 (a) Whenever a medical services provider dispenses a
2 controlled substance targeted by the health care authority
3 or whenever a prescription for the controlled substances is

4 filled by: (i) A pharmacist or pharmacy in this state; (ii) a
5 hospital, or other health care facility, for out-patient use;
6 or (iii) a pharmacy or pharmacist, licensed by the board of
7 pharmacy, but situated outside this state for delivery to a
8 person residing in this state, the medical services provider,
9 health care facility, pharmacist or pharmacy shall, in a
10 manner prescribed by rules promulgated by the health
11 care authority under this article, report the following
12 information, as applicable:

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

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

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

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

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

25 (6) The date the prescription was filled; and

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

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

**§16-29B-6c. Confidentiality; limited access to records; period of
retention; no civil liability for required report-
ing.**

1 The information required by this article to be kept by
2 the health care authority is to be confidential and open to
3 inspection only by the health care authority and employees
4 of the health care authority, members of the West Virginia
5 state police expressly authorized by the superintendent to
6 have access to the information, duly authorized agents of
7 licensing boards of practitioners authorized to prescribe
8 targeted controlled substances and persons with an
9 enforceable court order or regulatory agency administra-
10 tive subpoena. Licensed practitioners authorized to
11 prescribe or dispense targeted controlled substances may
12 request patient or customer specific information in the
13 possession of the health care authority as authorized by
14 this article relating to past or present use of the targeted
15 controlled substances: *Provided*, That the practitioner
16 making the request shall certify, in a form required by the
17 health care authority, that the receipt of the information
18 is necessary or advisable to the proper medical care of the
19 patient. Information received by the practitioner pursuant
20 to this section may not be used for any purpose other than
21 the proper medical care of a patient. The health care
22 authority shall maintain the information required by this
23 article for a period of no less than five years. Notwith-
24 standing any provisions of this code, data obtained under
25 the provisions of this article may be used for compilation
26 of educational, scholarly or statistical purposes as long as
27 the identities of persons or entities remain confidential.
28 No individual or entity required to report under section
29 four of this article is subject to a claim for civil damages or
30 other civil relief for the reporting of information to the
31 health care authority as required under, and in accordance
32 with, the provisions of this article. All information which
33 contains the identification of individual patients or
34 practitioners or other entities or from which their identi-
35 ties could be derived is not subject to the freedom of
36 information act set forth in article one, chapter twenty-
37 nine-b of this code. No pharmacist licensed under article
38 five, chapter thirty of this code may compound or dispense

39 any prescription order which, in his or her professional
40 judgment or opinion, contains any error, irregularity or
41 ambiguity or which, in his or her professional judgment or
42 opinion, may not be issued for a legitimate medical
43 purpose. A pharmacist who refuses to compound or
44 dispense a prescription order pursuant to the provisions of
45 this section has absolute immunity from liability or any
46 cause of action arising out of his or her act of refusal to
47 compound or dispense a prescription.

§16-29B-6d. Promulgation of rules.

1 The health care authority shall promulgate legislative
2 rules to effectuate the purposes of this article in accor-
3 dance with the provisions of chapter twenty-nine-a of this
4 code.

§16-29B-6e. Criminal penalties.

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

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

14 (c) Any person who is required by the provisions of this
15 article to submit information to the health care authority
16 who knowingly submits information known to that person
17 to be false or fraudulent is guilty of a misdemeanor and,
18 upon conviction thereof, shall be confined in a county or
19 regional jail not more than one year or fined not more than
20 five thousand dollars, or both.

21 (d) Any person granted access to the information
22 required by the provisions of this article to be maintained
23 by the health care authority who willfully discloses the
24 information required to be maintained by this article in a
25 manner inconsistent with a legitimate law-enforcement
26 purpose, a legitimate professional regulatory purpose, the
27 terms of a court order or as otherwise expressly authorized
28 by the provisions of this article is guilty of a misdemeanor
29 and, upon conviction thereof, shall be confined in a county
30 or regional jail for not more than six months or fined not
31 more than one thousand dollars, or both.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *disapproved bill* this the *2*
Day of *May*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date _____

Time _____