

FILED

2010 MAR 22 PM 4: 36

WEST VIRGINIA LEGISLATURE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 81

(SENATORS JENKINS, FOSTER AND STOLLINGS,
original sponsors)

[Passed March 11, 2010; in effect ninety days from passage.]

SB 81

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

FILE

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7 and §16-5W-8, all relating to creating the West Virginia Official Prescription Program Act; requiring prescriptions to be written on an official tamper-proof prescription pad; requiring the promulgation of legislative rules; setting forth the requirements to be included in the rules; setting for exclusions from the requirements of the West Virginia Official Prescription Program Act; reporting requirements; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7 and §16-5W-8, all to read as follows:

ARTICLE 5W. WEST VIRGINIA OFFICIAL PRESCRIPTION PROGRAM ACT.

§16-5W-1. Short title.

1 This act shall be known and may be cited as the “West
2 Virginia Official Prescription Program Act”.

§16-5W-2. Legislative findings.

1 (a) Use of fraudulently obtained prescriptionsto illegally
2 obtain prescription drugs is an epidemic. It has few equals
3 for sheer size, speed of growth, resistance to deterrence,
4 harm to people from so many strata of society, and large
5 costs to insurers. Overdoses, deaths and injuries continue
6 growing at an alarming rate. More than twenty million
7 Americans-nearly seven percent of the population-were
8 estimated to abuse prescription drugs in 2007, based on
9 the National Survey on Drug Use and Health.

10 (b) Prescription drug diversion drains health insurers
11 nationally of up to \$72.5 billion a year, including up to
12 \$24.9 billion annually for private insurers. Estimated
13 losses include insurance schemes, plus the larger hidden
14 costs of treating patients who develop serious medical
15 problems from abusing the addictive narcotics they
16 obtained through the swindles.

17 (c) Federal law now requires tamper resistant prescrip-
18 tions for all Medicaid prescriptions, and various states
19 have taken on the task of implementing document security
20 programs as part of their efforts to reduce substantially
21 prescription drug fraud.

22 (d) The State of New York documented Medicaid savings
23 of \$140 million directly tied to its secure issuance pre-
24 scription program during the first year after implementa-
25 tion. It is estimated that the savings resulting from the
26 reduction in prescription drug fraud will more than pay
27 for the cost of implementing an official secure state
28 prescription program in West Virginia within a reasonable
29 period of time following initial implementation.

§16-5W-3. Definitions.

1 As used in this article:

2 (1) “Board” means the Board of Pharmacy established in
3 article five, chapter thirty of this code.

4 (2) “Dispenser” means a person authorized in this state
5 to distribute to the ultimate user a substance monitored by
6 the prescription monitoring program, but does not include:

7 (A) A licensed hospital pharmacy that distributes such
8 substances for the purposes of inpatient hospital care or
9 the dispensing of prescriptions for controlled substances
10 at the time of discharge from such a facility; or

11 (B) A licensed health care provider who administers such
12 a substance at the direction of a licensed physician.

13 (3) “Prescriber” means an individual currently licensed
14 and authorized by this state to prescribe and administer
15 prescription drugs in the course of their professional
16 practice. These include, but are not limited to, allopathic
17 and osteopathic physicians, physician assistance, optome-
18 trists, podiatrists and nurse practitioners as allowed by
19 law.

20 (4) “West Virginia Official Prescription Program” means
21 the program established under section four of this article.

22 (5) “Program Vendor” means the private contractor or
23 contractors selected to manage the production and deliv-
24 ery of official state prescription paper.

25 (6) “West Virginia Official Prescription” means prescrip-
26 tion paper, which has been authorized by the state for use,
27 and meets the following criteria:

28 (A) Prevention of unauthorized copying,

29 (B) Prevention of erasure or modification,

30 (C) An ability to prevent counterfeit prescription pads;
31 and

32 (D) Capable of supporting automated validation through
33 pharmacy claims processing systems using the official
34 state prescription control number.

§16-5W-4. Establishment of West Virginia Official Prescription Program.

1 (a) The board shall establish and maintain an official
2 prescription program in the state. The board may contract
3 with a program vendor or vendors to establish and main-
4 tain the official state prescription program.

5 (b) The official West Virginia prescription paper shall be
6 authorized by the board through a program vendor or
7 vendors in batch quantities, which paper may be serially
8 numbered and unable to be altered, copied, or counter-
9 feited. Blank prescription paper shall not be transferable.
10 The official prescription paper shall be provided to
11 appropriate practitioners and facilities at a fee established
12 by legislative rule.

13 (c) Prescription paper may be issued to specific practi-
14 tioners marked with a unique number and, if so, shall only
15 be used by that practitioner. The board shall establish
16 security requirements concerning the procurement of the
17 official prescription paper which both the board and the
18 contracted program vendor shall use.

19 (d) A pharmacist may not fill a written prescription from
20 a West Virginia practitioner unless issued upon an official
21 state issued prescription form.

§16-5W-5. Legislative rules.

1 The board shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to accomplish the requirements
4 of this article. The legislative rules shall include, at a
5 minimum:

6 (1) That on July 1, 2011, every prescription written in
7 West Virginia by a practitioner shall be written on official
8 West Virginia tamper-resistant prescription paper.

9 (2) Contracting requirements for contracting with a
10 program vendor or vendors including auditing require-
11 ments for printing facilities and standard prescription pad
12 formatting requirements.

13 (3) Standard format for prescription paper and the
14 development of identifying markers on prescription paper.
15 These markers shall be on the front and back of the
16 prescription paper to be used by practitioners throughout
17 the state.

18 (4) A means of reporting unauthorized use, theft or
19 destruction of authorized state prescription paper.

20 (5) Fees for the distribution of standard format prescrip-
21 tion paper to practitioners and facilities.

§16-5W-6. Exclusions.

1 The provisions of this article do not apply to:

2 (a) oral prescription practices;

3 (b) electronic prescription practices;

4 (c) out-of-state prescription practices; or

5 (d) prescriptions generated within a licensed medical
6 facility that results in the internal dispensing of prescrip-
7 tion drugs to any patient receiving treatment in that
8 facility where the patient is never in possession of the
9 prescription.

§16-5W-7. Reporting requirements.

1 Practitioners shall immediately notify the board as
2 prescribed by legislative rule of the loss, destruction, theft
3 or unauthorized use of any official state prescription paper

4 issued to them as well as the failure to receive official
5 state prescription paper within a reasonable time after
6 ordering them from the board. Upon receipt of notifica-
7 tion, the board shall conduct a thorough investigation and
8 take any necessary and appropriate action.

§16-5W-8. Limitation of additional record keeping and liability.

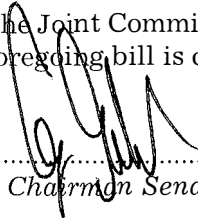
1 (a) Official state prescription paper may include unique
2 serial numbers for tracking purposes and to decrease
3 potential fraud. Inclusion of a serial number does not:

4 (1) Place additional tracking or reporting responsibilities
5 on a practitioner or pharmacist with the exception of those
6 listed in section six of this act; or

7 (2) Affect the liability or responsibility of a practitioner
8 or a pharmacist.

9 (b) Use of official West Virginia prescription paper shall
10 meet all requirements issued by the Center for Medicare
11 and Medicaid Services for the use of tamper-resistant
12 security features.

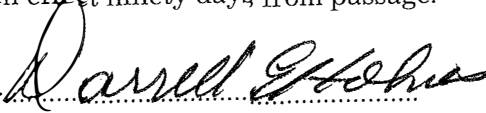
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

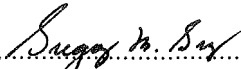

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Chairman Senate Committee

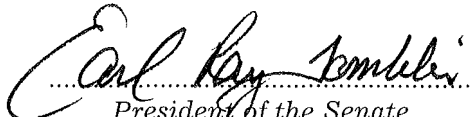

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *22nd*
Day of *March*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2010

Time 4:00 pm