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.]
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.]

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

§16-5W-2. Legislative findings.

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

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

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

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

§16-5W-3. Definitions.

As used in this article:
(1) "Board" means the Board of Pharmacy established in article five, chapter thirty of this code.

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

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

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

(3) "Prescriber" means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice. These include, but are not limited to, allopathic and osteopathic physicians, physician assistance, optometrists, podiatrists and nurse practitioners as allowed by law.

(4) "West Virginia Official Prescription Program" means the program established under section four of this article.

(5) "Program Vendor" means the private contractor or contractors selected to manage the production and delivery of official state prescription paper.

(6) "West Virginia Official Prescription" means prescription paper, which has been authorized by the state for use, and meets the following criteria:

(A) Prevention of unauthorized copying,

(B) Prevention of erasure or modification,

(C) An ability to prevent counterfeit prescription pads; and
(D) Capable of supporting automated validation through pharmacy claims processing systems using the official state prescription control number.

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

(a) The board shall establish and maintain an official prescription program in the state. The board may contract with a program vendor or vendors to establish and maintain the official state prescription program.

(b) The official West Virginia prescription paper shall be authorized by the board through a program vendor or vendors in batch quantities, which paper may be serially numbered and unable to be altered, copied, or counterfeited. Blank prescription paper shall not be transferable. The official prescription paper shall be provided to appropriate practitioners and facilities at a fee established by legislative rule.

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

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

§16-5W-5. Legislative rules.

The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to accomplish the requirements of this article. The legislative rules shall include, at a minimum:
(1) That on July 1, 2011, every prescription written in West Virginia by a practitioner shall be written on official West Virginia tamper-resistant prescription paper.

(2) Contracting requirements for contracting with a program vendor or vendors including auditing requirements for printing facilities and standard prescription pad formatting requirements.

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

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

(5) Fees for the distribution of standard format prescription paper to practitioners and facilities.

§16-5W-6. Exclusions.

The provisions of this article do not apply to:

(a) oral prescription practices;

(b) electronic prescription practices;

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

(d) prescriptions generated within a licensed medical facility that results in the internal dispensing of prescription drugs to any patient receiving treatment in that facility where the patient is never in possession of the prescription.

§16-5W-7. Reporting requirements.

Practitioners shall immediately notify the board as prescribed by legislative rule of the loss, destruction, theft or unauthorized use of any official state prescription paper.
issued to them as well as the failure to receive official
state prescription paper within a reasonable time after
ordering them from the board. Upon receipt of notifica-
tion, the board shall conduct a thorough investigation and
take any necessary and appropriate action.

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

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

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

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

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

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

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

[Signature]
Governor