

SB 335 (veto)

FILED

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WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE

OFFICE OF THE SECRETARY OF STATE

REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 335

**(SENATORS COLE (MR. PRESIDENT), AND KESSLER,
BY REQUEST OF THE EXECUTIVE)**

[PASSED FEBRUARY 12, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Senate Bill No. 335

(By Senators Cole (Mr. President) and Kessler,
By Request of the Executive)

[Passed February 12, 2015; 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 §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5 and §16-46-6; and to amend and reenact §30-1-7a of said code, all relating generally to accessing and administering opioid antagonists in overdose situations; defining terms; establishing objectives and purpose; allowing licensed health care providers to prescribe opioid antagonist to initial responders and certain individuals; allowing initial responders to possess and administer opioid antagonists; providing for limited liability for initial responders; providing for limited liability for licensed health care providers who prescribe opioid antagonist in accordance with this article; providing for limited liability for anyone who possesses and administers an opioid antagonist; establishing responsibility of licensed health care providers to provide educational materials on overdose prevention and administration of opioid antagonist; providing for data collection and reporting; providing for training requirements; and providing for rule-making authority.

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 §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5 and §16-46-6; and that §30-1-7a of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.

§16-46-1. Purpose and findings.

1 (a) The purpose of this article is to prevent deaths in
2 circumstances involving individuals who have overdosed on
3 opiates.

4 (b) The Legislature finds that permitting licensed health
5 care providers to prescribe opioid antagonists to initial
6 responders as well as individuals at risk of experiencing an
7 overdose, their relatives, friends or caregivers may prevent
8 accidental deaths as a result of opiate-related overdoses.

§16-46-2. Definitions.

1 As used in this article:

2 (1) "Initial responder" means emergency medical service
3 personnel, as defined in subdivision (g), section three, article
4 four-c of this chapter, including, but not limited to, a member
5 of the West Virginia State Police, a sheriff, a deputy sheriff,
6 a municipal police officer, a volunteer or paid firefighter and
7 any other person acting under color of law who responds to
8 emergencies.

9 (2) "Licensed health care provider" means a person,
10 partnership, corporation, professional limited liability

11 company, health care facility or institution licensed by or
12 certified in this state to provide health care or professional
13 health care services. This includes, but is not limited to,
14 medical physicians, allopathic and osteopathic physicians,
15 pharmacists, physician assistants or osteopathic physician
16 assistants who hold a certificate to prescribe drugs, advanced
17 nurse practitioners who hold a certificate to prescribe drugs,
18 hospitals, emergency service agencies and others as allowed
19 by law to prescribed drugs.

20 (3) "Opiates" or "opioid drugs" means drugs that are
21 members of the natural and synthetic opium family,
22 including, but not limited to, heroin, morphine, codeine,
23 methadone, oxycodone, hydrocodone, fentanyl and
24 hydromorphone.

25 (4) "Opioid antagonist" means a federal Food and Drug
26 Administration-approved drug for the treatment of an opiate-
27 related overdose, such as naloxone hydrochloride or other
28 substance, that, when administered, negates or neutralizes, in
29 whole or in part, the pharmacological effects of an opioid in the
30 body.

31 (5) "Opioid overdose prevention and treatment training
32 program" or "program" means any program operated or
33 approved by the Office of Emergency Services as set forth in
34 rules promulgated pursuant to this article.

35 (6) "Overdose" means an acute condition, including, but
36 not limited to, life-threatening physical illness, coma, mania,
37 hysteria or death, which is the result of the consumption or
38 use of opioid drugs.

39 (7) "Standing order" means a written document
40 containing rules, policies, procedures, regulations and orders
41 for the conduct of patient care, including the condition being

42 treated, the action to be taken and the dosage and route of
43 administration for the drug prescribed.

**§16-46-3. Licensed health care providers may prescribe opioid
antagonists to initial responders and certain individuals;
required educational materials; limited liability.**

1 (a) All licensed health care providers in the course of
2 their professional practice may offer to initial responders a
3 prescription for opioid antagonists, including a standing
4 order, to be used during the course of their professional duties
5 as initial responders.

6 (b) All licensed health care providers in the course of
7 their professional practice may offer to a person considered
8 by the licensed health care provider to be at risk of
9 experiencing an opiate-related overdose, or to a relative,
10 friend, caregiver or person in a position to assist a person at
11 risk of experiencing an opiate-related overdose, a prescription
12 for an opioid antagonist.

13 (c) All licensed health care providers who prescribe an
14 opioid antagonist under this section shall provide educational
15 materials to any person or entity receiving such a prescription
16 on opiate-related overdose prevention and treatment
17 programs, as well as materials on administering the
18 prescribed opioid antagonist.

19 (d) Any person who possesses an opioid antagonist and
20 administers it to a person whom they believe to be suffering
21 from an opioid-related overdose and who is acting in good
22 faith is not, as a result of his or her actions or omissions,
23 subject to criminal prosecution arising from the possession of
24 an opioid antagonist or subject to any civil liability with
25 respect to the administration of or failure to administer the
26 opioid antagonist unless the act or failure to act was the result
27 of gross negligence or willful misconduct.

28 (e) Any person who administers an opioid antagonist to
29 a person whom they believe to be suffering from an opioid-
30 related overdose is required to seek additional medical
31 treatment at a medical facility for that person immediately
32 following the administration of the opioid antagonist to avoid
33 further complications as a result of suspected opioid-related
34 overdose.

**§16-46-4. Possession and administration of an opioid antagonist by an
initial responder; limited liability.**

1 (a) An initial responder who is not otherwise authorized
2 to administer opioid antagonists may possess opioid
3 antagonists in the course of his or her professional duties as
4 an initial responder and administer an opioid antagonist in an
5 emergency situation if:

6 (1) The initial responder has successfully completed the
7 training required by subsection (b), section six of this article;
8 and

9 (2) The administration thereof is done after consultation
10 with medical command, as defined in subdivision (k), section
11 three, article four-c of this chapter: *Provided*, That an initial
12 responder may administer an opioid antagonist without
13 consulting medical command if he or she is unable to so
14 consult due to an inability to contact medical command
15 because of circumstances outside the control of the initial
16 responder or if there is insufficient time for the consultation
17 based upon the emergency conditions presented.

18 (b) An initial responder who meets the requirements of
19 subsection (a) of this section, acting in good faith, is not, as
20 a result of his or her actions or omissions, subject to civil
21 liability or criminal prosecution arising from or relating to the
22 administration of the opioid antagonist unless the actions or

23 omissions were the result of the initial responder's gross
24 negligence or willful misconduct.

**§16-46-5. Licensed health care providers' limited liability related to
opioid antagonist prescriptions.**

1 (a) A licensed health care provider who is permitted by
2 law to prescribe drugs, including opioid antagonists, may, if
3 acting in good faith, prescribe and subsequently dispense or
4 distribute an opioid antagonist without being subject to civil
5 liability or criminal prosecution unless prescribing the opioid
6 antagonist was the result of the licensed health care
7 provider's gross negligence or willful misconduct.

8 (b) For purposes of this chapter and chapter sixty-a, any
9 prescription written, as described in section three of this article,
10 shall be presumed as being issued for a legitimate medical
11 purpose in the usual course of professional practice unless the
12 presumption is rebutted by a preponderance of the evidence.

§16-46-6. Data collection and reporting requirements; training.

1 (a) Beginning March 1, 2016, and annually thereafter the
2 following reports shall be compiled:

3 (1) The Office of Emergency Medical Services shall
4 collect data regarding each administration of an opioid
5 antagonist by an initial responder. The Office of Emergency
6 Medical Services shall report this information to the
7 Legislative Oversight Commission on Health and Human
8 Resources Accountability and the West Virginia Bureau for
9 Behavioral Health and Health Facilities. The data collected
10 and reported shall include:

11 (A) The number of training programs operating in an
12 Office of Emergency Medical Services-designated training
13 center;

14 **(B) The number of individuals who received training to**
15 **administer an opioid antagonist;**

16 **(C) The number of individuals who received an opioid**
17 **antagonist administered by an initial responder;**

18 **(D) The number of individuals who received an opioid**
19 **antagonist administered by an initial responder who were**
20 **revived;**

21 **(E) The number of individuals who received an opioid**
22 **antagonist administered by an initial responder who were not**
23 **revived; and**

24 **(F) The cause of death of individuals who received an**
25 **opioid antagonist administered by an initial responder and**
26 **were not revived.**

27 **(2) Each licensed health care provider shall submit data**
28 **to the West Virginia Board of Pharmacy by February 1 of**
29 **each calendar year, excluding any personally identifiable**
30 **information, regarding the number of opioid antagonist**
31 **prescriptions written in accordance with this article in the**
32 **preceding calendar year. The licensed health care provider**
33 **shall indicate whether the prescription was written to an**
34 **individual in the following categories: An initial responder;**
35 **an individual at risk of opiate-related overdose; a relative of**
36 **a person at risk of experiencing an opiate-related overdose;**
37 **a friend of a person at risk of experiencing an opiate-related**
38 **overdose; or a caregiver or person in a position to assist a**
39 **person at risk of experiencing an opiate-related overdose.**

40 **(3) The West Virginia Board of Pharmacy shall compile**
41 **all data described in subdivision (2) of this section and any**
42 **additional data maintained by the Board of Pharmacy related**
43 **to prescriptions of opioid antagonists. By March 1, the Board**

44 of Pharmacy shall provide a report of this information to the
45 Legislative Oversight Commission on Health and Human
46 Resources Accountability and the West Virginia Bureau for
47 Behavioral Health and Health Facilities.

48 (b) To implement the provisions of this section, including
49 establishing the standards for certification and approval of
50 opioid overdose prevention and treatment training programs
51 and protocols regarding a refusal to transport, the Office of
52 Emergency Medical Services may promulgate emergency
53 rules pursuant to the provisions of section fifteen, article
54 three, chapter twenty-nine-a of this code and shall propose
55 rules for legislative approval in accordance with the
56 provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-7a. Continuing education.

1 (a) Each board referred to in this chapter shall establish
2 continuing education requirements as a prerequisite to license
3 renewal. Each board shall develop continuing education
4 criteria appropriate to its discipline, which shall include, but
5 not be limited to, course content, course approval, hours
6 required and reporting periods.

7 (b) Notwithstanding any other provision of this code or
8 the provision of any rule to the contrary, each person issued
9 a license to practice medicine and surgery or a license to
10 practice podiatry or licensed as a physician assistant by the
11 West Virginia Board of Medicine, each person issued a
12 license to practice dentistry by the West Virginia Board of

13 Dental Examiners, each person issued a license to practice
14 optometry by the West Virginia Board of Optometry, each
15 person licensed as a pharmacist by the West Virginia Board
16 of Pharmacy, each person licensed to practice registered
17 professional nursing or licensed as an advanced nurse
18 practitioner by the West Virginia Board of Examiners for
19 Registered Professional Nurses, each person licensed as a
20 licensed practical nurse by the West Virginia State Board of
21 Examiners for Licensed Practical Nurses and each person
22 licensed to practice medicine and surgery as an osteopathic
23 physician and surgeon or licensed or certified as an
24 osteopathic physician assistant by the West Virginia Board of
25 Osteopathy shall complete drug diversion training,
26 best-practice prescribing of controlled substances training
27 and training on prescribing and administration of an opioid
28 antagonist, as the trainings are established by his or her
29 respective licensing board, if that person prescribes,
30 administers or dispenses a controlled substance, as that term
31 is defined in section one hundred one, article one, chapter
32 sixty-a of this code.

33 (1) Notwithstanding any other provision of this code or
34 the provision of any rule to the contrary, the West Virginia
35 Board of Medicine, the West Virginia Board of Dental
36 Examiners, the West Virginia Board of Optometry, the West
37 Virginia Board of Pharmacy, the West Virginia Board of
38 Examiners for Registered Professional Nurses, the West
39 Virginia State Board of Examiners for Licensed Practical
40 Nurses and the West Virginia Board of Osteopathy shall
41 establish continuing education requirements and criteria
42 appropriate to their respective discipline on the subject of
43 drug diversion training, best-practice prescribing of
44 controlled substances training and prescribing and
45 administration of an opioid antagonist training for each
46 person issued a license or certificate by their respective board
47 who prescribes, administers or dispenses a controlled

48 substance, as that term is defined in section one hundred one,
49 article one, chapter sixty-a of this code, and shall develop a
50 certification form pursuant to subdivision (b)(2) of this
51 section.

52 (2) Each person who receives his or her initial license or
53 certificate from any of the boards set forth in subsection (b)
54 of this section shall complete the continuing education
55 requirements set forth in subsection (b) of this section within
56 one year of receiving his or her initial license from that board
57 and each person licensed or certified by any of the boards set
58 forth in subsection (b) of this section who has held his or her
59 license or certificate for longer than one year shall complete
60 the continuing education requirements set forth in subsection
61 (b) of this section as a prerequisite to each license renewal:
62 *Provided*, That a person subject to subsection (b) of this
63 section may waive the continuing education requirements for
64 license renewal set forth in subsection (b) of this section if he
65 or she completes and submits to his or her licensing board a
66 certification form developed by his or her licensing board
67 attesting that he or she has not prescribed, administered or
68 dispensed a controlled substance, as that term is defined in
69 section one hundred one, article one, chapter sixty-a of this
70 code, during the entire applicable reporting period.

71 (c) Notwithstanding any other provision of this code or
72 the provision of any rule to the contrary, each person licensed
73 to practice registered professional nursing or licensed as an
74 advanced nurse practitioner by the West Virginia Board of
75 Examiners for Registered Professional Nurses, each person
76 licensed as a licensed practical nurse by the West Virginia
77 State Board of Examiners for Licensed Practical Nurses, each
78 person issued a license to practice midwifery as a
79 nurse-midwife by the West Virginia Board of Examiners for
80 Registered Professional Nurses, each person issued a license
81 to practice chiropractic by the West Virginia Board of

82 Chiropractic, each person licensed to practice psychology by
83 the Board of Examiners of Psychologists, each person
84 licensed to practice social work by the West Virginia Board
85 of Social Work and each person licensed to practice
86 professional counseling by the West Virginia Board of
87 Examiners in Counseling shall complete two hours of
88 continuing education for each reporting period on mental
89 health conditions common to veterans and family members of
90 veterans, as the continuing education is established or
91 approved by his or her respective licensing board. The two
92 hours shall be part of the total hours of continuing education
93 required by each board and not two additional hours.

94 (1) Notwithstanding any other provision of this code or
95 the provision of any rule to the contrary, on or before July 1,
96 2015, the boards referred to in this subsection shall establish
97 continuing education requirements and criteria and approve
98 continuing education coursework appropriate to their
99 respective discipline on the subject of mental health
100 conditions common to veterans and family members of
101 veterans, in cooperation with the Secretary of the Department
102 of Veterans' Assistance. The continuing education shall
103 include training on inquiring about whether the patients are
104 veterans or family members of veterans, and screening for
105 conditions such as post-traumatic stress disorder, risk of
106 suicide, depression and grief and prevention of suicide.

107 (2) On or after July 1, 2017, each person licensed by any
108 of the boards set forth in this subsection shall complete the
109 continuing education described herein as a prerequisite to his
110 or her next license renewal.

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

Mark R. Hayward
.....
Chairman Senate Committee

Steve Westfall
.....
Vice Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clark A. Bernard
.....
Clerk of the Senate

Steph J. Harris
.....
Clerk of the House of Delegates

Willie P. Pelfrey
.....
President of the Senate

Anthony P. Patton
.....
Speaker of the House of Delegates

The within *enrolled* this the *27th*
Day of *February*, 2015.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

FEB 19 2015

Time 10:22 AM