WEST VIRGINIA CODE CHAPTER 16 ARTICLE 59

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§16-59-1. Definitions.

As used in this article, the term:

"Certificate of compliance" means a certificate that is issued to a recovery residence by the department’s appointed certifying agency.

"Certified recovery residence" means a recovery residence that holds a valid certificate of compliance.

"Director" means the Director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Department" means the Department of Human Services.

"Immediate jeopardy" means an issue of non-compliance that places the health and safety of residents of the recovery residence at risk for serious injury, serious harm, serious impairment, or death.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code.

"Recovery residence" means a single-family, drug-free, and alcohol-free residential dwelling unit, or other form of group housing, that is offered or advertised by any person or entity as a residence that provides a drug-free and alcohol-free living environment for the purposes of promoting sustained, long-term recovery from substance use disorder.

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§16-59-2. Voluntary certification of recovery residences.

(a) The department shall contract with an entity to serve as the certifying agency for a voluntary certification program for drug-free and alcohol-free recovery residences based upon standards determined by the National Alliance for Recovery Residences (NARR) or a similar entity. The certifying agency shall establish and implement an accreditation program for drug-free and alcohol-free recovery residences that shall maintain nationally recognized standards that:

(1) Uphold industry best practices and support a safe, healthy, and effective recovery environment;

(2) Evaluate the residence's ability to assist persons in achieving long-term recovery goals;

(3) Protect residents of drug- and alcohol-free housing against unreasonable and unfair practices in setting and collecting fee payments.

(4) Protect residents from human trafficking that may occur in the recovery residence setting.

(5) Protect patients from predatory practices that lead to patient brokering.

(b) The department shall require the recovery residence to collect, retain, and submit the following:

(1) Documentation verifying certification as specified and administered by the certifying agency;

(2) If a municipality or county offers or requires verification of compliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, documentation of verification by the municipality or county where the recovery residence is located stating that the recovery residence is in compliance.

(3) Data from each registered recovery residence at intervals determined by the department, but not less than annually. The data shall be uniform across all recovery residences. The department, in conjunction with applicable stakeholders to include, but not be limited to, the Office of the Inspector General, the Superintendent, or designee, of the West Virginia State Police, the West Virginia Sheriff's Association, and a representative of West Virginia National Alliance for Recovery Residences, shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. to specify the data to be collected. The data variables shall include, but not be limited to, variables to allow the department, certifying agency, the Office of the Inspector General, and the West Virginia Fusion Center-Human Trafficking Division to conduct an analysis of the performance of recovery residences and to determine if patient brokering or human trafficking is occurring. The data shall be shared in personally identifiable form with the Office of the Inspector General, the certifying agency, and the West Virginia Fusion Center-Human Trafficking Division, with the

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appropriate Health Insurance Portability and Accountability Act safeguards in place to protect the data in transmission and in storage.

(4) Documentation verifying initial and continued registration as required in §16-59-4 of this code.

(c) If a municipality or county offers or requires verification of compliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, the municipality or county must perform requested or required inspections within 30 days of receiving a request for verification. If a residence is located within a municipality or county that offers or requires verification of compliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, and the municipality or county fails to perform requested or required inspections within 30 days of receiving a request for verification, the residence may apply for and be granted certification directly through the certifying agency without the aforementioned verification.

(d) Upon receiving a complete application, the certifying agency shall evaluate the residence to determine if the residence is in compliance with national best-practice standards, health, and safety requirements. Additionally, any application of the items specified in this section must comply with the Fair Housing Act, 42 U.S.C. §3601 *et seq*. and the Americans with Disabilities Act of 2008, 42 U.S.C. §12101 *et seq*.

(1) If it is determined that the residence is in compliance, the certification agency shall issue a certificate of compliance to the recovery residence operator for the specific recovery residence location set forth in the application.

(2) Each residence location, even if operated by the same person or entity, must maintain a certificate of compliance for the purposes of this article.

(e) The certifying agency may suspend or revoke a certificate of compliance if the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified in writing and served by certified mail unless the deficiency is an immediate jeopardy in which case it may be served in person. Suspension or revocation may take place after a notice of deficiency is served and has existed for at least 30 days, except in cases of an immediate jeopardy. After receipt of a suspension or revocation notice, the recovery residence is prohibited from accepting new residents and may only work to transfer residents to another certified recovery residence. If the certifying agency determines that an immediate jeopardy exists, then the operator will be provided a notice of deficiency, at the time of the certification visit, and the recovery residence shall immediately take actions to correct the listed deficiencies before the certification agency departs the premises. If the operator is unable to correct all of the listed deficiencies prior to the certifying agency departing the premises, then the certifying agency has the authority to revoke any applicable certification immediately and give the operator of the recovery residence up to five days to transfer existing residents to another certified recovery residence.

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(f) Notwithstanding any other provision to the contrary, the certifying agency shall implement and maintain a process by which a residence whose certification has been suspended or revoked may apply for, and be granted, reinstatement. If a municipality or county offers or requires verification of compliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, and if the residence's certification suspended or revoked for noncompliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, the municipality or county may charge a fee of up to $100 for any requested reinspection of a recovery residence by the residence seeking reinstatement.

(g) The department shall periodically evaluate the quality, integrity, and efficacy of the accreditation program developed. The department shall promulgate rules subject to legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement this section that shall include a process for receiving complaints against drug-free and alcohol-free recovery residences and criteria by which such residences' certifications can be revoked.

(h) A person may not advertise to the public any recovery residence as a "certified recovery residence" unless the recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor, punishable by a fine of not less than $1,000 nor more than $5,000 for each infraction.

(i) This article does not permit a structure that would not be normally classified as a single-family dwelling to be exempt from the state building code or fire code.

(j) Nothing herein shall be read to require any recovery residence to obtain certifications set forth herein in order to conduct operations: *Provided*, That a recovery residence without a valid certificate of compliance, as provided in §16-59-2 of this code, is prohibited from receiving a referral or receiving a person released from prison for the placement of any prisoner, parolee, probationer, or prospective, current, or discharged patient, or client from the Division of Corrections and Rehabilitation, the Parole Board, the county probation offices, day report center, municipal courts, or a medical or clinical treatment facility that receives funds for its operations from the State Treasury. A person who violates this subsection commits a misdemeanor, punishable by a fine of not less than $1,000 nor more than $5,000 for each infraction.

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§16-59-3. Referrals to recovery residences; prohibitions; receipt of state funds.

(a) The Division of Corrections and Rehabilitation, the Parole Board, county probation offices, day report centers, municipal courts, and a medical or clinical treatment facility that receives any funds for its operations from the State Treasury shall not make a referral of any prisoner, parolee, probationer, or prospective, current, or discharged patient, or client to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in §16-59-2 of this code.

(b) No recovery residence is eligible to receive funds from any source within the State Treasury unless it holds a valid certificate of compliance as provided in §16-59-2 of this code.

(c) No recovery residence is eligible to receive funds from a resident that is in the form of a state benefit, including, but not limited to, Medicaid, Temporary Assistance for Needy Families, or the Supplemental Nutrition Assistance Program, unless it holds a valid certificate of compliance from the certifying agency as provided in §16-59-2 of this code. The certifying agency may set forth additional requirements for the appropriate use of such benefits within a recovery residence.

(d) A state agency and a medical or clinical treatment facility that receive funds for its operation from the State Treasury, that make referrals to recovery residences shall maintain records of referrals to or from recovery residences.

(e) Nothing in this section requires a state agency or a clinical or medical provider to make a referral of a person to a recovery residence.

(f) A person who violates this section commits a misdemeanor, punishable by a fine of not less than $1,000 nor more than $5,000, unless otherwise specified.

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§16-59-4. Registration of recovery residences.

(a) Prior to conducting business in the State of West Virginia a recovery residence shall register with the Office of Health Facility Licensure and Certification. The director shall make an application form available on its publicly accessible internet website that includes a request for the following information:

(1) The identity, address, and telephone number of the applicant;

(2) The name, business address, and telephone number of the contact person for the applicant;

(3) When applicable, the federal employer identification number for the applicant; and

(4) Any other information the director considers necessary and appropriate to establish a complete registration of an applicant.

(b) Term and fee. —

(1) The terms of registration shall be one year from the date of issuance;

(2) The fee shall be submitted by the applicant with an application for registration. An application fee for initial registration or renewal registration fee is nonrefundable;

(3) The amount of the initial registration fee and the renewal registration fee is $250: *Provided*, That the director may annually adjust the initial and renewal registration fee for inflation based upon the consumer price index.

(c) Registration. —

(1) The director shall issue a registration, as appropriate, to an applicant when the director determines an applicant has submitted a complete application and paid the required registration fee.

(2) The registration may be in paper or electronic form, is nontransferable, and shall prominently list the expiration date of the registration.

(3) A list of all recovery residences shall be made available on the director's publicly accessible internet website.

(d) Penalties. —

(1) A civil monetary penalty of up to $20,000 a day may be assessed against an owner who operates, owns, or manages an unregistered recovery residence. Each day of the continuing violation after the civil monetary penalty is assessed may be considered a separate violation. The initial notice of non-compliance shall be provided to the owner via certified mail, return

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receipt requested.

(B) If the recovery residence is not registered within 30 days from the date of receipt of the initial notice, the director shall notify the certifying agency to revoke the recovery residence's certificate of compliance, issued pursuant to §16-59-2 of this code, for non-compliance with this section.

(C) If the recovery residence is not registered within 30 days from the date of receipt of the initial notice, and if such recovery residence does not have a certificate of compliance, then the director shall issue a closure notice to the recovery residence for non-compliance with this section.

(e) Due process. —

(1) Within 10 days of the date of receipt of a notice provided pursuant to subsection (d), the recovery residence's owner may submit a request for an administrative hearing before the Board of Review for an informal meeting to address the notice and the reason stated therefor.

(2) The recovery residence's owner or owners and the Office of Health Facility Licensure and Certification will be entitled to representation by legal counsel at the informal meeting and at the administrative hearing at their own expense, respectively.

(3) All of the pertinent provisions of §29A-5-1 *et seq*. of this code and applicable legislative rules governing administrative hearings for the Board of Review shall apply to and govern any formal hearing authorized by this article.

(4) If the recovery residence's owner fails to request a hearing within the time frame specified, he or she shall be subject to the full limitation, enforcement action, penalty, or any combination thereof, imposed pursuant to this section.

(5) The filing of a request for an administrative hearing or an informal meeting does not stay or supersede the enforcement of a limitation, enforcement action, penalty, or any combination thereof, imposed pursuant to this section.

(6) Any party who is dissatisfied with the decision of the Board of Review as a result of a formal hearing provided in this section, may within 30 days after receiving notice of the decision, petition the West Virginia Intermediate Court of Appeals, in term or vacation, for judicial review of the decision.

(7) The court may affirm, modify, or reverse, the decision of the Board of Review and either the applicant or the registrant, or the Inspector General may appeal the court's decision to the West Virginia Supreme Court of Appeals.

(8) Notwithstanding the existence of, or pursuant to any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for

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an injunction against any person, partnership, association, or corporation, to restrain or prevent the establishment, conduct, management, or operation of any recovery residence for violation of any provision of this section or any rule lawfully promulgated thereunder without first obtaining a registration in the manner herein provided.

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