WEST VIRGINIA CODE CHAPTER 16 ARTICLE 64

WV Legislature

§16-64-1. Definitions.

As used in this article, the term:

“Administrator” means a person having the authority and responsibility for operation of the syringe services program and serves as the contact for communication with the Director of the Harm Reduction Program.

“Applicant” means the entity applying for a license under this article.

“Board of Review” means the board established in §9-2-6(13) of this code.

“Director” means the Director of the Office of Health Facility Licensure and Certification.

“Fixed site” means a building or single location where syringe exchange services are provided.

“Harm reduction program” means a program that provides services intended to lessen the adverse consequences of drug use and protect public health and safety, by providing direct access to or a referral to: Syringe services program; substance use disorder treatment programs; screenings; vaccinations; education about overdose prevention; wound care; opioid antagonist distribution and education; and other medical services.

“HIV” means the etiologic virus of AIDS or Human Immunodeficiency Virus.

“License” means the document issued by the office authorizing the syringe services program to operate.

“Local health department” means a health department operated by local boards of health, created, established, and maintained pursuant to §16-2-1 *et seq*. of this code.

“Location” means a site within the service area of a local health department. A location can be a fixed site or a mobile site.

“Mobile site” means a location accessible by foot or vehicle that is not at a fixed indoor setting.

“Syringe services program” means a community-based program that provides access to sterile syringes, facilitates safe disposal of used syringes, and is part of a harm reduction program.

“Syringe stick injury” means a penetrating wound from a syringe that may result in exposure to blood.

“Syringe stick injury protocol” means policies and procedures to prevent syringe stick injury to syringe exchange staff, including volunteers, community members, and to syringe

WV Legislature

exchange participants.

“Service area” means the territorial jurisdiction of the syringe services program.

“Sharps waste” means used syringes and lancets.

“Staff” means a person who provides syringe services or harm reduction services on behalf of a program.

“Syringe” means both the needle and syringe used to inject fluids into the body.

WV Legislature

§16-64-2. Application for license to offer a syringe services program.

(a) All new and existing syringe services programs shall obtain a license from the Office for Health Facility Licensure and Certification.

(b) To be eligible for a license, a syringe services program shall:

(1) Submit an application on a form approved and provided by the office director;

(2) Provide the name of the program;

(3) Provide a description of the harm reduction program it is associated with and the harm reduction services provided in accordance with §16-2-3 of this code;

(4) Provide the contact information of the individual designated by the applicant as the administrator of the harm reduction program;

(5) Provide the hours of operation, location, and staffing. The description of hours of operation must include the specific days the syringe services program is open, opening and closing times, and frequency of syringe exchange services. The description of staffing must include number of staff, titles of positions, and descriptions of their functions;

(6) Provide a specific description of the applicant's ability to refer to or facilitate entry into substance use treatment;

(7) Provide a specific description of the applicant's ability to encourage usage of medical care and mental health services as well as social welfare and health promotion;

(8) Pay an application fee in amount not to exceed $500, to be determined by the director by legislative rule; and

(9) Provide a written statement of support from a majority of the members of the county commission and a majority of the members of a governing body of a municipality in which it is located or is proposing to locate.

WV Legislature

§16-64-3. Program requirements.

(a) To be approved for a license, a syringe services program shall be part of a harm reduction program which offers or refers an individual to the following services which shall be documented in the application:

(1) HIV, hepatitis, and sexually transmitted diseases screening;

(2) Vaccinations;

(3) Birth control and long-term birth control;

(4) Behavioral health services;

(5) Overdose prevention supplies and education;

(6) Syringe collection and sharps disposal;

(7) Educational services related to disease transmission;

(8) Assist or refer an individual to a substance use treatment program;

(9) Refer to a health care practitioner or treat medical conditions; and

(10) Programmatic guidelines including a sharps disposal plan, a staff training plan, a data collection and program evaluation plan, and a community relations plan.

(b) A syringe services program:

(1) Shall offer services, at every visit, from a qualified licensed health care provider;

(2) Shall exclude minors from participation in the syringe exchange, but may provide minors with harm reduction services;

(3) Shall ensure a syringe is unique to the syringe services program;

(4) Shall distribute syringes with a goal of a 1:1 model;

(5) May substitute weighing the volume of syringes returned versus dispensed as specified. This substitution is only permissible if it can be done accurately and in the following manner:

(A) The syringes shall be contained in a see-through container; and

(B) A visual inspection of the container shall take place prior to the syringes being weighed;

(6) Shall distribute the syringe directly to the program recipient;

WV Legislature

(7) Proof of West Virginia identification upon dispensing of the needles;

(8) Shall train staff on:

(A) The services and eligibility requirements of the program;

(B) The services provided by the program;

(C) The applicant's policies and procedures concerning syringe exchange transactions;

(D) Disposing of infectious waste;

(E) Sharps waste disposal education that ensures familiarity with the state law regulating proper disposal of home-generated sharps waste;

(F) Procedures for obtaining or making referrals;

(G) Opioid antagonist administration;

(H) Cultural diversity and sensitivity to protected classes under state and federal law; and

(I) Completion of attendance logs for participation in mandatory training;

(9) Shall maintain a program for the public to report syringe litter and shall endeavor to collect all syringe litter in the community;

(10) Shall not distribute any smoking devices, including, but not limited to, hand pipes, bubblers, bongs, dab rigs, hookahs, crack pipes, or disposable smoking devices.

(c) Each syringe services program shall have a syringe dispensing plan which includes, but is not limited to the following:

(1) Maintaining records of returned syringes by participants for two years;

(2) Preventing syringe stick injuries;

(3) Tracking the number of syringes dispensed;

(4) Tracking the number of syringes collected;

(5) Tracking the number of syringes collected as a result of community reports of syringe litter;

(6) Eliminating direct handling of sharps waste;

(7) Following a syringe stick protocol and plan;

WV Legislature

(8) A budget for sharps waste disposal or an explanation if no cost is associated with sharps waste disposal; and

(9) A plan to coordinate with the continuum of care, including the requirements set forth in this section.

(d) If an applicant does not submit all of the documentation required in §16-63-2 of this code, the application shall be denied and returned to the applicant for completion.

(e) If an applicant fails to comply with the program requirements, the application shall be denied and returned to the applicant for completion.

(f) A license is effective for one year.

WV Legislature

§16-64-4. Procedure for revocation or limitation of the syringe services programs.

(a) The director may revoke, suspend, or limit a syringe services program's ability to offer services for the following reasons:

(1) The syringe services program provides false or misleading information to the director;

(2) An inspection indicates the syringe services programs is in violation of the law or legislative rule;

(3) The syringe services program fails to cooperate with the director during a complaint investigation; or

(4) Recission of the letter of approval from a majority of the county commissioners or the governing body of a municipality.

(b) The director shall send written notice to the syringe services program of revocation, suspension, or limitation of its operations. The written notice shall include the following:

(1) Effective date of the revocation, suspension, or limitation;

(2) The basis for the revocation, suspension, or limitation;

(3) The location to which the revocation, suspension, or limitation applies;

(4) The remedial measures the syringe services programs shall take, if any, to consider reinstatement of the program or removal of the limitation; and

(5) Steps to appeal of the decision.

WV Legislature

§16-64-5. Administrative due process

(a) A syringe services program who disagrees with an administrative decision may, within 30 days after receiving notice of the decision, appeal the decision to the department's board of review.

(b) All pertinent provisions of §29A-5-1 *et seq*. of this code apply to and govern any hearing authorized by this statute.

(c) The filing of a request for a hearing does not stay or supersede enforcement of the final decision of the director. The director may, upon good cause shown, stay such enforcement.

WV Legislature

§16-64-6. Administrative appeals and judicial review.

(a) A syringe services program who disagrees with the final administrative decision may, within 30 days after the date the appellant received notice of the decision of the board of review, appeal the decision to the Circuit Court of Kanawha County or in the county where the petitioner resides or does business.

(b) The filing of the petition for appeal does not stay or supersede enforcement of the final decision or order of the director. An appellant may apply to the circuit court for a stay of or to supersede the final decision or order for good cause shown.

(c) No circuit court has jurisdiction to consider a decision of the board if the petitioner has failed to file a request for review with the board of review within the time frame set forth in this article.

WV Legislature

§16-64-7. Reporting requirements; renewal; rulemaking.

(a) A syringe services program shall renew its license annually on the anniversary date of license approval.

(b) A syringe services program shall file an annual report with the director. The report shall include:

(1) The total number of persons served;

(2) The total numbers and types of syringes, and syringes dispensed, collected, and disposed of;

(3) The total number of syringe stick injuries to non-participants;

(4) Statistics regarding the number of individuals entering substance use treatment; and

(5) The total and types of referrals made to substance use treatment and other services.

(c) The office shall promulgate and propose rules and regulations under §29A-1-1 *et seq*. of this code to carry out the intent and purposes of this article. Such rules and regulations shall be in accordance with evidence-based practices. The office shall promulgate an emergency rule by July 1, 2021. The emergency rule shall effectuate the provisions of this article in accordance with evidence-based practices.

WV Legislature

§16-64-8. Immunity.

(a) Notwithstanding any provision of this code to the contrary, an employee, volunteer, or participant of a licensed syringe services program may not be arrested, charged with, or prosecuted for possession of any of the following:

(1) Sterile or used syringes, hypodermic syringes, injection supplies obtained from or returned to a program, or other safer drug use materials obtained from a program established pursuant to this article, including testing supplies for illicit substances.

(2) Residual amounts of a controlled substance contained in a used syringe, used injection supplies obtained from or returned to a program.

(b) A law-enforcement officer who, acting on good faith, arrests or charges a person who is thereafter determined to be entitled to immunity from prosecution under this section is not liable for the arrest or filing of charges.

(c) An individual who is wrongly detained, arrested or prosecuted under this section shall have the public record associated with the detainment, arrest or prosecution expunged.

(d) A health care professional, or an employee or volunteer of a licensed syringe services program is not subject to professional sanction, detainment, arrest, or prosecution for carrying out the provisions of this article.

(e) A business that has syringe litter on its property is immune from civil or criminal liability in any action relating to the needle on its property unless the business owner acted in reckless disregard for the safety of others.

WV Legislature

§16-64-9. Civil penalties and injunctive relief.

(a) The Office of Health Facilities Licensure and Certification may assess an administrative penalty of not less than $500 nor more than $10,000 per violation of this article.

(b) The Office of Health Facilities Licensure and Certification may seek injunctive relief to enforce the provisions of this article.

WV Legislature

§16-64-10. Coordination of care.

(a) A syringe service program shall coordinate with other health care providers in its services to render care to the individuals as set forth in the program requirements.

(b) In the event that the syringe services program is closed, the syringe services program shall notify the participant of the closure of the service, prior to closure, in a conspicuous location, and provide an individual with a transition care plan.

(c) The Bureau for Medical Services shall submit a state plan amendment to permit harm reduction programs to be an eligible provider, except that the syringe exchange services shall not be eligible for reimbursement under the state plan.

(d) Upon passage, any existing provider not offering the full array of harm reduction services as set forth in this section shall cease and desist offering all needle exchange services. Any provider offering the full array of harm reduction services shall have until January 1, 2022, to come into compliance with this section. Any new provider shall have until January 1, 2022, to come into compliance with the provisions of this section.

WV Legislature