WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 447

(Senators Caruth, Prezioso, Stollings, Jenkins, McKenzie and Guill, original sponsors)

[Passed March 10, 2007; in effect ninety days from passage.]
AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating generally to the regulation of opioid treatment centers; and providing for specific minimum requirements established by the rules provided in said section.

Be it enacted by the Legislature of West Virginia:
That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules in accordance with
2 the provisions of article three, chapter twenty-nine-a of
3 this code that are necessary and proper to effectuate the
4 purposes of this chapter. The secretary may appoint or
5 designate advisory councils of professionals in the areas
6 of hospitals, nursing homes, barbers and beauticians,
7 postmortem examinations, mental health and mental
8 retardation centers and any other areas necessary to
9 advise the secretary on rules.

10 The rules may include, but are not limited to, the
11 regulation of:

12 (a) Land usage endangering the public health:
13 Provided, That no rules may be promulgated or
14 enforced restricting the subdivision or development of
15 any parcel of land within which the individual tracts,
16 lots or parcels exceed two acres each in total surface
17 area and which individual tracts, lots or parcels have an
18 average frontage of not less than one hundred fifty feet
19 even though the total surface area of the tract, lot or
20 parcel equals or exceeds two acres in total surface area,
21 and which tracts are sold, leased or utilized only as
22 single family dwelling units. Notwithstanding the
23 provisions of this subsection, nothing in this section
24 may be construed to abate the authority of the
25 department to: (1) Restrict the subdivision or
26 development of a tract for any more intense or higher
27 density occupancy than a single family dwelling unit;
(2) propose or enforce rules applicable to single family
dwelling units for single family dwelling unit sanitary
sewerage disposal systems; or (3) restrict any
subdivision or development which might endanger the
public health, the sanitary condition of streams or
sources of water supply;

(b) The sanitary condition of all institutions and
schools, whether public or private, public conveyances,
dairies, slaughterhouses, workshops, factories, labor
camps, all other places open to the general public and
inviting public patronage or public assembly, or
tendering to the public any item for human
consumption, and places where trades or industries are
conducted;

(c) Occupational and industrial health hazards, the
sanitary conditions of streams, sources of water supply,
sewerage facilities and plumbing systems and the
qualifications of personnel connected with any of those
facilities, without regard to whether the supplies or
systems are publicly or privately owned; and the design
of all water systems, plumbing systems, sewerage
systems, sewage treatment plants, excreta disposal
methods and swimming pools in this state, whether
publicly or privately owned;

(d) Safe drinking water, including:

(1) The maximum contaminant levels to which all
public water systems must conform in order to prevent
adverse effects on the health of individuals, and, if
appropriate, treatment techniques that reduce the
contaminant or contaminants to a level which will not
adversely affect the health of the consumer. The rule
shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(2) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and rules promulgated under this section; recordkeeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(3) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water;

(e) Food and drug standards, including cleanliness, proscription of additives, proscription of sale and other requirements in accordance with article seven of this chapter as are necessary to protect the health of the citizens of this state;

(f) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed and the
availability, communications and equipment
requirements with respect to emergency medical service
attendants and to emergency medical care technician-
paramedics: Provided, That any regulation of
emergency medical service attendants and emergency
medical care technician-paramedics shall not exceed
the provisions of article four-c of this chapter;

(g) The health and sanitary conditions of
establishments commonly referred to as bed and
breakfast inns. For purposes of this article, “bed and
breakfast inn” means an establishment providing
sleeping accommodations and, at a minimum, a
breakfast for a fee: Provided, That the secretary may
not require an owner of a bed and breakfast providing
sleeping accommodations of six or fewer rooms to
install a restaurant style or commercial food service
facility: Provided, however, That the secretary may not
require an owner of a bed and breakfast providing
sleeping accommodations of more than six rooms to
install a restaurant-type or commercial food service
facility if the entire bed and breakfast inn or those
rooms numbering above six are used on an aggregate of
two weeks or less per year;

(h) Fees for services provided by the bureau for public
health including, but not limited to, laboratory service
fees, environmental health service fees, health facility
fees and permit fees;

(i) The collection of data on health status, the health
system and the costs of health care;

(j) Opioid treatment programs duly licensed and
operating under the requirements of chapter
twenty-seven of this code. The Health Care Authority shall develop new certificate of need standards, pursuant to the provisions of article two-d of this chapter, that are specific for opioid treatment program facilities. No applications for a certificate of need for opioid treatment programs shall be approved by the Health Care Authority as of the effective date of the two thousand seven amendments to this subsection. The secretary shall promulgate revised emergency rules to govern licensed programs: Provided, That there shall be a moratorium on the licensure of new opioid treatment programs that do not have a certificate of need as of the effective date of the two thousand seven amendments to this subsection, which shall continue until the Legislature determines that there is a necessity for additional opioid treatment facilities in West Virginia. The secretary shall file revised emergency rules with the secretary of state to regulate opioid programs in compliance with subsections (1) through (9), inclusive, of this section: Provided, That any opioid treatment program facility that has received a certificate of need pursuant to article two-d, of this chapter by the Health Care Authority shall be permitted to proceed to license and operate the facility. All existing opioid treatment programs shall be in compliance within one hundred eighty days of the effective date of the revised emergency rules as required herein. The revised emergency rules shall provide at a minimum:

(1) That the initial assessment prior to admission for entry into the opioid treatment program shall include an initial drug test to determine whether an individual is either opioid addicted or presently receiving methadone for an opioid addiction from another opioid treatment program. The patient may be admitted to the
program if there is a positive test for either opioids or methadone or there are objective symptoms of withdrawal, or both, and all other criteria set forth in the rule for admission into an opioid treatment program are met: Provided, That admission to the program may be allowed to the following groups with a high risk of relapse without the necessity of a positive test or the presence of objective symptoms: Pregnant women with a history of opioid abuse, prisoners or parolees recently released from correctional facilities, former clinic patients who have successfully completed treatment but who believe themselves to be at risk of imminent relapse and HIV patients with a history of intravenous drug use.

(2) That within seven days of the admission of a patient, the opioid treatment program shall complete an initial assessment and an initial plan of care. Subsequently, the opioid treatment program shall develop a treatment plan of care by the thirtieth day after admission and attach to the patient's chart no later than five days after such plan is developed. The treatment plan is to reflect that detoxification is an option for treatment and supported by the program.

(3) That each opioid treatment program shall report and provide statistics to the Department of Health and Human Resources at least semi annually which includes the total number of patients; the number of patients who have been continually receiving methadone treatment in excess of two years, including the total number of months of treatment for each such patient; the state residency of each patient; the number of patients discharged from the program, including the total months in the treatment program prior to discharge and whether the discharge was for:
(A) Termination or disqualification;

(B) Completion of a program of detoxification;

(C) Voluntary withdrawal prior to completion of all requirements of detoxification as determined by the opioid treatment program; or

(D) An unexplained reason.

(4) That random drug testing of patients be conducted during the course of treatment. For purposes of these rules, random drug testing shall mean that each patient of an opioid treatment program facility has a statistically equal chance of being selected for testing at random and at unscheduled times. Any refusal to participate in a random drug test shall be considered a positive test: Provided, That nothing contained in this section or the legislative rules promulgated in conformity herewith will preclude any opioid treatment program from administering such additional drug tests as determined necessary by the opioid treatment program.

(5) That all random drug tests conducted by an opioid treatment program shall, at a minimum, test for the following:

(A) Opiates, including oxycodone at common levels of dosing;

(B) Methadone and any other medication used by the program as an intervention;

(C) Benzodiazepines including diazepam, lorazepam,
clonazepam and alprazolam;

(D) Cocaine;

(E) Methamphetamine or amphetamine; and

(F) Other drugs determined by community standards, regional variation or clinical indication.

A positive test shall be a test that results in the presence of any drug or substance listed in this schedule and any other drug or substance prohibited by the opioid treatment program;

(6) That a positive drug test result after the first six months in an opioid treatment program shall result in the following:

(A) Upon the first positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling to the patient, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of thirty days; and

(B) Upon a second positive drug test result within six months of a previous positive drug test result, the opioid treatment program shall:
(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of sixty days; and

(3) Provide mandatory documented treatment team meetings with the patient.

(C) Upon a third positive drug test result within a period of six months the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of one hundred twenty days; and

(3) Provide mandatory and documented treatment team meetings with the patient which will include, at a minimum: The need for continuing treatment; a discussion of other treatment alternatives; and the execution of a contract with the patient advising the patient of discharge for continued positive drug tests.
(D) Upon a fourth positive drug test within a six-month period, the patient shall be immediately discharged from the opioid treatment program or, at the option of the patient, shall immediately be provided the opportunity to participate in a 21-day detoxification plan, followed by immediate discharge from the opioid treatment program.

(7) That the opioid treatment program must report and provide statistics to the Department of Health and Human Resources demonstrating compliance with the random drug test rules including confirmation that:

(A) The random drug tests were truly random in regard to both the patients tested and to the times random drug tests were administered by lottery or some other objective standard so as not to prejudice or protect any particular patient.

(B) The total number and the number of positive results; and

(C) The number of expulsions from the program.

(8) That all opioid treatment facilities be open for business seven days per week. Provided, That the opioid treatment center maybe closed for eight holidays and two training days per year.

(9) That the Office of Health Facility Licensure and Certification develop policies and procedures in conjunction with the Board of Pharmacy that will allow access to the Prescription Drug Registry maintained by the Board of Pharmacy before administration of methadone or other treatment in an opioid treatment
program, after any positive drug test, and at each ninety day treatment review to ensure the patient is not seeking prescription medication from multiple sources.

(k) Other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.
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...Day of...April...2007.

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Governor