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SB 447

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 447

(SENATORS CARUTH, PREZIOSO, STOLLINGS, JENKINS,
MCKENZIE AND GUILLS, *original sponsors*)

[Passed March 10, 2007; in effect ninety days from passage.]

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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;

28 (2) propose or enforce rules applicable to single family
29 dwelling units for single family dwelling unit sanitary
30 sewerage disposal systems; or (3) restrict any
31 subdivision or development which might endanger the
32 public health, the sanitary condition of streams or
33 sources of water supply;

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

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

52 (d) Safe drinking water, including:

53 (1) The maximum contaminant levels to which all
54 public water systems must conform in order to prevent
55 adverse effects on the health of individuals, and, if
56 appropriate, treatment techniques that reduce the
57 contaminant or contaminants to a level which will not
58 adversely affect the health of the consumer. The rule

59 shall contain provisions to protect and prevent
60 contamination of wellheads and well fields used by
61 public water supplies so that contaminants do not reach
62 a level that would adversely affect the health of the
63 consumer;

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

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

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

83 (f) The training and examination requirements for
84 emergency medical service attendants and emergency
85 medical care technician-paramedics; the designation of
86 the health care facilities, health care services and the
87 industries and occupations in the state that must have
88 emergency medical service attendants and emergency
89 medical care technician-paramedics employed and the

90 availability, communications and equipment
91 requirements with respect to emergency medical service
92 attendants and to emergency medical care technician-
93 paramedics: *Provided*, That any regulation of
94 emergency medical service attendants and emergency
95 medical care technician-paramedics shall not exceed
96 the provisions of article four-c of this chapter;

97 (g) The health and sanitary conditions of
98 establishments commonly referred to as bed and
99 breakfast inns. For purposes of this article, "bed and
100 breakfast inn" means an establishment providing
101 sleeping accommodations and, at a minimum, a
102 breakfast for a fee: *Provided*, That the secretary may
103 not require an owner of a bed and breakfast providing
104 sleeping accommodations of six or fewer rooms to
105 install a restaurant style or commercial food service
106 facility: *Provided, however*, That the secretary may not
107 require an owner of a bed and breakfast providing
108 sleeping accommodations of more than six rooms to
109 install a restaurant-type or commercial food service
110 facility if the entire bed and breakfast inn or those
111 rooms numbering above six are used on an aggregate of
112 two weeks or less per year;

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

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

119 (j) Opioid treatment programs duly licensed and
120 operating under the requirements of chapter

121 twenty-seven of this code. The Health Care Authority
122 shall develop new certificate of need standards,
123 pursuant to the provisions of article two-d of this
124 chapter, that are specific for opioid treatment program
125 facilities. No applications for a certificate of need for
126 opioid treatment programs shall be approved by the
127 Health Care Authority as of the effective date of the two
128 thousand seven amendments to this subsection. The
129 secretary shall promulgate revised emergency rules to
130 govern licensed programs: *Provided*, That there shall be
131 a moratorium on the licensure of new opioid treatment
132 programs that do not have a certificate of need as of the
133 effective date of the two thousand seven amendments to
134 this subsection, which shall continue until the
135 Legislature determines that there is a necessity for
136 additional opioid treatment facilities in West Virginia.
137 The secretary shall file revised emergency rules with the
138 secretary of state to regulate opioid programs in
139 compliance with subsections (1) through (9), inclusive,
140 of this section: *Provided*, That any opioid treatment
141 program facility that has received a certificate of need
142 pursuant to article two-d, of this chapter by the Health
143 Care Authority shall be permitted to proceed to license
144 and operate the facility. All existing opioid treatment
145 programs shall be in compliance within one hundred
146 eighty days of the effective date of the revised
147 emergency rules as required herein. The revised
148 emergency rules shall provide at a minimum:

149 (1) That the initial assessment prior to admission for
150 entry into the opioid treatment program shall include
151 an initial drug test to determine whether an individual
152 is either opioid addicted or presently receiving
153 methadone for an opioid addiction from another opioid
154 treatment program. The patient may be admitted to the

155 program if there is a positive test for either opioids or
156 methadone or there are objective symptoms of
157 withdrawal, or both, and all other criteria set forth in
158 the rule for admission into an opioid treatment program
159 are met: *Provided*, That admission to the program may
160 be allowed to the following groups with a high risk of
161 relapse without the necessity of a positive test or the
162 presence of objective symptoms: Pregnant women with
163 a history of opioid abuse, prisoners or parolees recently
164 released from correctional facilities, former clinic
165 patients who have successfully completed treatment but
166 who believe themselves to be at risk of imminent relapse
167 and HIV patients with a history of intravenous drug use.

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

177 (3) That each opioid treatment program shall report
178 and provide statistics to the Department of Health and
179 Human Resources at least semi annually which includes
180 the total number of patients; the number of patients
181 who have been continually receiving methadone
182 treatment in excess of two years, including the total
183 number of months of treatment for each such patient;
184 the state residency of each patient; the number of
185 patients discharged from the program, including the
186 total months in the treatment program prior to
187 discharge and whether the discharge was for:

188 (A) Termination or disqualification;

189 (B) Completion of a program of detoxification;

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

193 (D) An unexplained reason.

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

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

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

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

214 (C) Benzodiazepines including diazepam, lorazepam,

215 clonazepam and alprazolam;

216 (D) Cocaine;

217 (E) Methamphetamine or amphetamine; and

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

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

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

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

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

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

237 (B) Upon a second positive drug test result within six
238 months of a previous positive drug test result, the opioid
239 treatment program shall:

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

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

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

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

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

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

262 (3) Provide mandatory and documented treatment
263 team meetings with the patient which will include, at a
264 minimum: The need for continuing treatment; a
265 discussion of other treatment alternatives; and the
266 execution of a contract with the patient advising the
267 patient of discharge for continued positive drug tests.

268 (D) Upon a fourth positive drug test within a six-
269 month period, the patient shall be immediately
270 discharged from the opioid treatment program or, at the
271 option of the patient, shall immediately be provided the
272 opportunity to participate in a 21-day detoxification
273 plan, followed by immediate discharge from the opioid
274 treatment program.

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

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

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

286 (C) The number of expulsions from the program.

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

291 (9) That the Office of Health Facility Licensure and
292 Certification develop policies and procedures in
293 conjunction with the Board of Pharmacy that will allow
294 access to the Prescription Drug Registry maintained by
295 the Board of Pharmacy before administration of
296 methadone or other treatment in an opioid treatment

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297 program, after any positive drug test, and at each ninety
298 day treatment review to ensure the patient is not
299 seeking prescription medication from multiple sources.

300 (k) Other health-related matters which the
301 department is authorized to supervise and for which the
302 rule-making authority has not been otherwise assigned.

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


.....
Chairman Senate Committee


.....
Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this
the 4th Day of April, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2007

Time 1:40 pm