

HB 3195

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3195**

(By Delegates Argento, Boggs, Craig, Hatfield,
Perdue, Pethel and Williams)



Passed April 11, 2009

In Effect from Passage

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H. B. 3195

(BY DELEGATES ARGENTO, BOGGS, CRAIG, HATFIELD, PERDUE,
PETHTEL AND WILLIAMS)

[Passed April 11, 2009; in effect from passage.]

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating to rule-making authority of the Secretary of the Department of Health and Human Resources; authorizing legislative and emergency rules to establish a funding mechanism for state aid for local health departments and to basic public health services funds.

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

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

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

30 (b) The sanitary condition of all institutions and schools,
31 whether public or private, public conveyances, dairies,
32 slaughterhouses, workshops, factories, labor camps, all other
33 places open to the general public and inviting public

34 patronage or public assembly, or tendering to the public any
35 item for human consumption and places where trades or
36 industries are conducted;

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

46 (d) Safe drinking water, including:

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

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

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

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

75 (f) The training and examination requirements for
76 emergency medical service attendants and emergency
77 medical care technician-paramedics; the designation of the
78 health care facilities, health care services and the industries
79 and occupations in the state that must have emergency
80 medical service attendants and emergency medical care
81 technician-paramedics employed and the availability,
82 communications and equipment requirements with respect to
83 emergency medical service attendants and to emergency
84 medical care technician-paramedics: *Provided*, That any
85 regulation of emergency medical service attendants and
86 emergency medical care technician-paramedics may not
87 exceed the provisions of article four-c of this chapter;

88 (g) The health and sanitary conditions of establishments
89 commonly referred to as bed and breakfast inns. For
90 purposes of this article, "bed and breakfast inn" means an
91 establishment providing sleeping accommodations and, at a
92 minimum, a breakfast for a fee: *Provided*, That the secretary
93 may not require an owner of a bed and breakfast providing
94 sleeping accommodations of six or fewer rooms to install a
95 restaurant-style or commercial food service facility:
96 *Provided, however*, That the secretary may not require an
97 owner of a bed and breakfast providing sleeping
98 accommodations of more than six rooms to install a

99 restaurant-type or commercial food service facility if the
100 entire bed and breakfast inn or those rooms numbering above
101 six are used on an aggregate of two weeks or less per year;

102 (h) Fees for services provided by the Bureau for Public
103 Health including, but not limited to, laboratory service fees,
104 environmental health service fees, health facility fees and
105 permit fees;

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

108 (j) Opioid treatment programs duly licensed and
109 operating under the requirements of chapter twenty-seven of
110 this code. The Health Care Authority shall develop new
111 certificate of need standards, pursuant to the provisions of
112 article two-d of this chapter, that are specific for opioid
113 treatment program facilities. No applications for a certificate
114 of need for opioid treatment programs shall be approved by
115 the Health Care Authority as of the effective date of the 2007
116 amendments to this subsection. The secretary shall
117 promulgate revised emergency rules to govern licensed
118 programs: *Provided*, That there is a moratorium on the
119 licensure of new opioid treatment programs that do not have
120 a certificate of need as of the effective date of the 2007
121 amendments to this subsection, which shall continue until the
122 Legislature determines that there is a necessity for additional
123 opioid treatment facilities in West Virginia. The secretary
124 shall file revised emergency rules with the Secretary of State
125 to regulate opioid programs in compliance with subsections
126 (1) through (9), inclusive, of this section: *Provided, however*,
127 That any opioid treatment program facility that has received
128 a certificate of need pursuant to article two-d, of this chapter
129 by the Health Care Authority shall be permitted to proceed to
130 license and operate the facility. All existing opioid treatment
131 programs shall be in compliance within one hundred eighty

132 days of the effective date of the revised emergency rules as
133 required herein. The revised emergency rules shall provide at
134 a minimum:

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

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

160 (3) That each opioid treatment program shall report and
161 provide statistics to the Department of Health and Human
162 Resources at least semiannually which includes the total
163 number of patients; the number of patients who have been
164 continually receiving methadone treatment in excess of two

166 years, including the total number of months of treatment for
167 each such patient; the state residency of each patient; the
168 number of patients discharged from the program, including
169 the total months in the treatment program prior to discharge
170 and whether the discharge was for:

171 (A) Termination or disqualification;

172 (B) Completion of a program of detoxification;

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

176 (D) An unexplained reason.

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

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

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

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

195 (C) Benzodiazepine including diazepam, lorazepan,
196 clonazepam and alprazolam;

197 (D) Cocaine;

198 (E) Methamphetamine or amphetamine; and

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

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

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

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

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

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

217 (B) Upon a second positive drug test result within six
218 months of a previous positive drug test result, the opioid
219 treatment program shall:

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

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

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

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

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

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

238 (3) Provide mandatory and documented treatment team
239 meetings with the patient which will include, at a minimum:
240 The need for continuing treatment; a discussion of other
241 treatment alternatives; and the execution of a contract with
242 the patient advising the patient of discharge for continued
243 positive drug tests.

244 (D) Upon a fourth positive drug test within a six-month
245 period, the patient shall be immediately discharged from the
246 opioid treatment program or, at the option of the patient, shall
247 immediately be provided the opportunity to participate in a
248 twenty-one day detoxification plan, followed by immediate
249 discharge from the opioid treatment program.

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

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

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

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

261 (8) That all opioid treatment facilities be open for
262 business seven days per week: *Provided*, That the opioid
263 treatment center may be closed for eight holidays and two
264 training days per year.

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

274 (k) The secretary shall propose a rule for legislative
275 approval in accordance with the provisions of article three,
276 chapter twenty-nine-a or this code for the distribution of state
277 aid to local health departments and basic public health
278 services funds.

279 (1) The rule shall include the following provisions:

280 (A) Base allocation amount for each county;

281 (B) Establishment and administration of an emergency
282 fund of no more than two percent of the total annual funds of
283 which unused amounts are to be distributed back to local
284 boards of health at the end of each fiscal year;

285 (C) A calculation of funds utilized for state support of
286 local health departments;

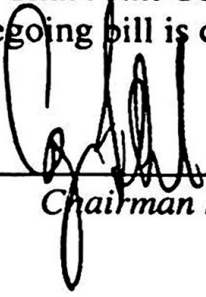
287 (D) Distribution of remaining funds on a per capita
288 weighted population approach which factors coefficients for
289 poverty, health status, population density and health
290 department interventions for each county and a coefficient
291 which encourages counties to merge in the provision of
292 public health services;

293 (E) A hold-harmless provision to provide that each local
294 health department receives no less in state support for a
295 period of three years beginning in the 2009 budget year.

296 (2) The Legislature finds that an emergency exists and,
297 therefore, the secretary shall file an emergency rule to
298 implement the provisions of this section pursuant to the
299 provisions of section fifteen, article three, chapter twenty-
300 nine-a of this code. The emergency rule is subject to the
301 prior approval of the Legislative Oversight Commission on
302 Health and Human Resources Accountability prior to filing
303 with the Secretary of State.

304 (I) Other health-related matters which the department is
305 authorized to supervise and for which the rule-making
306 authority has not been otherwise assigned.

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



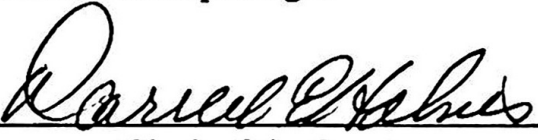
Chairman Senate Committee



Chairman House Committee

Originating in the House.

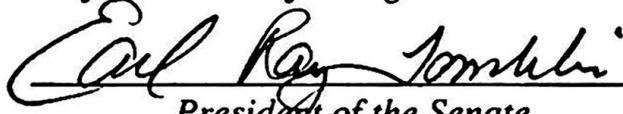
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 11th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

MAY - 5 2009

Time 3:50 pm