ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 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.
The secretary may propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and mental retardation centers and any other areas necessary to advise the secretary on rules.

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

(a) Land usage endangering the public health: Provided, that no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to: (1) Restrict the subdivision or development of a tract for any more intense or higher 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 may 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 2007 amendments to this subsection. The secretary shall promulgate revised emergency rules to govern licensed programs: Provided, That there is 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 2007 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, however, 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 semiannually 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) Benzodiazepine 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 is 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 twenty-one day detoxification plan, followed by immediate 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.
(1) The rule shall include the following provisions:

(A) Base allocation amount for each county;

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

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

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

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

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

(1) Other health-related matters which the department is authorized to supervise and for which the rule-making 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 January, 2009.

Governor