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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

House Bill No. 3075

(By Delegates Perdue, Hatfield, Border,
Reynolds and Morgan)



Passed March 10, 2011

In Effect Ninety Days From Passage

HB 3075

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E N R O L L E D

OFFICE OF THE CLERK
SECRETARY OF STATE

H. B. 3075

(BY DELEGATES PERDUE, HATFIELD, BORDER,
REYNOLDS AND MORGAN)

[Passed March 10, 2011; 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 to increasing the time period in the hold-harmless provision, when distributing state aid to local health departments and basic public health services funds, from three years to four years.

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 advisory
5 councils of professionals in the areas of hospitals, nursing
6 homes, barbers and beauticians, postmortem examinations,
7 mental health and intellectual disability centers and any other
8 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; record
62 keeping; laboratory certification; as well as procedures and
63 conditions for granting variances and exemptions to public
64 water systems from state public water systems rules; and

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

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

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

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

100 (h) Fees for services provided by the Bureau for Public
101 Health including, but not limited to, laboratory service fees,

102 environmental health service fees, health facility fees and
103 permit fees;

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

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

133 (1) That the initial assessment prior to admission for
134 entry into the opioid treatment program shall include an

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

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

159 (3) That each opioid treatment program shall report and
160 provide statistics to the Department of Health and Human
161 Resources at least semiannually which includes the total
162 number of patients; the number of patients who have been
163 continually receiving methadone treatment in excess of two
164 years, including the total number of months of treatment for
165 each such patient; the state residency of each patient; the
166 number of patients discharged from the program, including
167 the total months in the treatment program prior to discharge
168 and whether the discharge was for:

- 169 (A) Termination or disqualification;
- 170 (B) Completion of a program of detoxification;
- 171 (C) Voluntary withdrawal prior to completion of all
172 requirements of detoxification as determined by the opioid
173 treatment program; or
- 174 (D) An unexplained reason.
- 175 (4) That random drug testing of patients be conducted
176 during the course of treatment. For purposes of these rules,
177 random drug testing shall mean that each patient of an opioid
178 treatment program facility has a statistically equal chance of
179 being selected for testing at random and at unscheduled
180 times. Any refusal to participate in a random drug test shall
181 be considered a positive test: *Provided*, That nothing
182 contained in this section or the legislative rules promulgated
183 in conformity herewith will preclude any opioid treatment
184 program from administering such additional drug tests as
185 determined necessary by the opioid treatment program.
- 186 (5) That all random drug tests conducted by an opioid
187 treatment program shall, at a minimum, test for the
188 following:
- 189 (A) Opiates, including oxycodone at common levels of
190 dosing;
- 191 (B) Methadone and any other medication used by the
192 program as an intervention;
- 193 (C) Benzodiazepine including diazepam, lorazepam,
194 clonazepam and alprazolam;
- 195 (D) Cocaine;

196 (E) Methamphetamine or amphetamine; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

278 (A) Base allocation amount for each county;

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

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


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


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

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

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

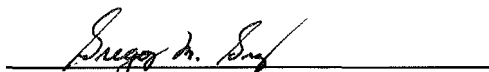
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

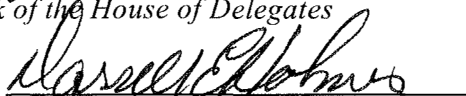

Chairman, House Committee


Chairman, Senate Committee

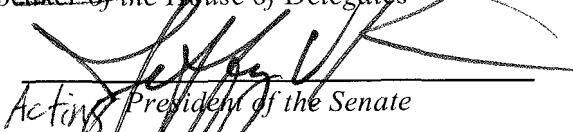
Originating in the House.

To take effect ninety days from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


Acting President of the Senate

The within is approved this the 24th
day of March, 2011.


Governor

PRESENTED TO THE GOVERNOR

MAR 18 2011

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