

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 265

(SENATOR SNYDER, *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 265

OFFICE OF THE CLERK
LEGISLATIVE SERVICE CENTER
STATE HOUSE
CHARLESTON, WEST VIRGINIA

2013 MAY -2 PM 4:00

FILE

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E N R O L L E D

OFFICE OF THE
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 265

(SENATOR SNYDER, *original sponsor*)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to reportable diseases, events and

conditions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to general sanitation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Grade A pasturized milk; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; repealing the Bureau of Public Health's legislative rule relating to the regulation of opioid treatment programs, 64 CSR 90; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pulse oximetry newborn testing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the regulation of opioid treatment programs, 69 CSR 7; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management clinic licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia; authorizing the Health Care Authority to promulgate a legislative rule relating to the West Virginia Health Information Network; and authorizing the Bureau of Senior Services to promulgate a legislative rule relating to the in-home care worker registry.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF
HEALTH AND HUMAN RESOURCES TO
PROMULGATE LEGISLATIVE RULES.**

§64-5-1. Bureau for Public Health.

1 (a) The legislative rule filed in the State Register on
2 August 31, 2012, authorized under the authority of section
3 four, article one, chapter sixteen of this code, modified by the
4 Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on January 10, 2013, relating
7 to the Department of Health and Human Resources (reportable
8 diseases, events and conditions, 64 CSR 7), is authorized with
9 the following amendments:

10 On page twenty-four, subsection 9.1., by striking out the
11 words “the reporting” and inserting in lieu thereof the words
12 “the access”;

13 On page twenty-five, subsection 9.2., by striking out the
14 words “be reported” and inserting in lieu thereof the words
15 “be made available”;

16 On page twenty-five, subsection 9.2., by striking out the
17 words “the reporting” and inserting in lieu thereof the words
18 “the access”;

19 On page twenty-five, subsection 9.2., after the word
20 “activities” by inserting the following: “consistent with the
21 mission of the bureau. The responsibility for communication
22 with healthcare facilities regarding data collection, data quality
23 and completeness rests with the Office of Epidemiology and
24 Prevention Services within the Bureau for Public Health”;

25 And,

26 On page twenty-five, by striking out all of subsection 9.3.
27 and renumbering the remaining subsection.

28 (b) The legislative rule filed in the State Register on June
29 29, 2012, authorized under the authority of section four, article
30 one, chapter sixteen of this code, modified by the Department
31 of Health and Human Resources to meet the objections of the
32 Legislative Rule-Making Review Committee and refiled in the
33 State Register on November 15, 2012, relating to the
34 Department of Health and Human Resources (general
35 sanitation, 64 CSR 18), is authorized with the following
36 amendment:

37 On page three, subdivision 2.13, by removing the period
38 and inserting the following, "Bed and Breakfast Inn."

39 (c) The legislative rule filed in the State Register on
40 August 27, 2012, authorized under the authority of section
41 five, article seven, chapter sixteen of this code, relating to the
42 Department of Health and Human Resources (Grade A
43 pasturized milk, 64 CSR 34), is authorized.

44 (d) The legislative rule filed in the State Register on
45 August 31, 2012, authorized under the authority of section
46 one, article eleven, chapter sixteen of this code, modified by
47 the Department of Health and Human Resources to meet the
48 objections of the Legislative Rule-Making Review committee
49 and refiled in the State Register on January 10, 2013, relating
50 to the Department of Health and Human Resources (fees for
51 services, 64 CSR 51), is authorized with the following
52 amendment:

53 On page eleven, subdivision 9.7, after the word
54 "emergency", by inserting a period and removing the
55 underscored words "or as a relevant factor associated with the
56 provision of services and may include but is not limited to,
57 supply shortages, federal or other funding restrictions of policy
58 changes impacting the ability to provide services".

59 (e) The legislative rule filed in the State Register on
60 October 11, 2012, authorized under the authority of section
61 four, article one, chapter sixteen of this code, relating to the
62 Department of Health and Human Resources (regulation of
63 opioid treatment programs, 64 CSR 90), is repealed.

64 (f) The legislative rule filed in the State Register on
65 August 27, 2012, authorized under the authority of section
66 four, article one, chapter sixteen of this code, modified by the
67 Department of Health and Human Resources to meet the
68 objections of the Legislative Rule-Making Review Committee
69 and refiled in the State Register on January 10, 2013, relating
70 to the Department of Health and Human Resources (pulse
71 oximetry newborn testing, 64 CSR 100), is authorized with the
72 following amendment:

73 On page two, subdivision 5.3, by striking out the words
74 “the closest” and inserting in lieu thereof the word “an”.

§64-5-2. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on
2 August 31, 2012, authorized under the authority of section
3 one, article eleven, chapter sixteen of this code, modified by
4 the Department of Health and Human Resources to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on February 5, 2013, relating
7 to the Department of Health and Human Resources (regulation
8 of opioid treatment programs, 69 CSR 7), is authorized with
9 the following amendment:

10 On page fourteen, by striking section 7.3 and inserting a
11 new section 7.3 to read as follows:

“7.3. License Fees and Inspection Costs.

1 7.3.a. All applications for an initial or renewed license
2 shall be accompanied by a non-refundable license fee in the
3 amount required by this rule. The annual renewal fee is based
4 upon the average daily total census of the program. In addition
5 to the set fee, the annual renewal fee shall be adjusted on the
6 first day of June of each year to correspond with increases in
7 the consumer price index. The base amounts for initial and
8 renewal fees are as follows:

9 7.3.a.1. Initial license fee - \$250;

10 7.3.a.2. Renewal fee - fewer than 500 patients - \$500 plus
11 adjustment;

12 7.3.a.3. Renewal fee - 500 to 1,000 patients - \$1,000 plus
13 adjustment;

14 7.3.a.4. Renewal fee - more than 1,000 patients - \$1,500
15 plus adjustment.

16 7.3.b. An opioid treatment program shall pay for the cost
17 of the initial inspection made by the secretary prior to issuing
18 a license. The cost of the initial inspection is \$400, and shall
19 be billed to the applicant by the secretary within five business
20 days after the inspection. The cost of the initial inspection
21 must be paid in full by the applicant before a license may be
22 issued.

23 7.3.c. The Office of Health Facility Licensure and
24 Certification shall use the fee for increased oversight on opioid
25 treatment programs.”;

26 On page thirty-two, by inserting a new subdivision 18.3.j.
27 to read as follows:

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28 “18.3.j. There shall be one (1) counselor for every fifty
29 (50) clients in the program.”;

30 On page fifty-three, by striking section 30.8 and inserting
31 a new section 30.8 to read as follows:

32 “30.8. Each opioid treatment program must provide
33 counseling on preventing exposure to, and the transmission of,
34 human immunodeficiency virus (HIV) disease and Hepatitis
35 C disease for each patient admitted or re-admitted to
36 maintenance or detoxification treatment. Services rendered to
37 patients with HIV disease shall comply with the requirements
38 of section 44 of this rule.”;

39 On page fifty-four, by striking subdivision 31.4.a and
40 inserting a new subdivision 31.4.a to read as follows:

41 “31.4.a. Preventing exposure to, and the transmission of,
42 HIV disease and Hepatitis C disease for each patient admitted
43 or readmitted to maintenance or detoxification treatment; and”;

44 On page fifty-six, by striking subdivision 32.2.a and
45 inserting a new subdivision 32.2.a to read as follows:

46 “32.2.a. The initial post-admission assessment shall
47 consist of a comprehensive medical evaluation, which shall
48 include, but not be limited to:

49 32.2.a.1. A comprehensive physical evaluation;

50 32.2.a.2. A comprehensive psychiatric evaluation,
51 including mental status examination and psychiatric history;

52 32.2.a.3. A personal and family medical history;

53 32.2.a.4. A comprehensive history of substance abuse,
54 both personal and family;

55 32.2.a.5. A tuberculosis skin test and chest X-ray, if skin
56 test is positive;

57 32.2.a.6. A screening test for syphilis;

58 32.2.a.7. A Hepatitis C test;

59 32.2.a.8. An HIV test to the extent voluntarily elected by
60 the patient; and

61 32.2.a.9. Other tests as necessary or appropriate (e.g.,
62 CBC, EKG, chest X-ray, pap smear, hepatitis B surface
63 antigen and hepatitis B antibody testing).”;

64 On page seventy, by striking section 37.14 and inserting
65 a new section 37.14 to read as follows:

66 “37.14 The state authority may approve exceptional
67 unsupervised-medication dosages, including alternative
68 medications, on a case-by-case basis upon application for an
69 exemption by the program physician. Any authorization for
70 exceptions shall be consistent with guidelines and protocols of
71 approved authorities, provided that the authority may not grant
72 any exceptions during a calendar month which exceed three
73 (3) exceptions or ten (10) percent of the number of patients
74 enrolled in the program on the last day of the previous month,
75 whichever is greater: *Provided*, That the state authority may
76 grant additional exceptions for inclement weather or clinic
77 closure.”;

78 On page seventy-three, by inserting a new subdivision
79 38.14 to read as follows:

80 **“38.14 Maintenance treatment shall be discontinued within**
81 **two (2) continuous years after the treatment is begun unless,**
82 **based upon the clinical judgment of the medical director or**
83 **program physician and staff which shall be recorded in the**
84 **client’s record by the medical director or program physician,**
85 **the client’s status indicates that the treatment should be**
86 **continued for a longer period of time because discontinuance**
87 **from treatment would lead to a return to (i) illicit opiate abuse**
88 **or dependence, or (ii) increased psychiatric, behavioral or**
89 **medical symptomology.”;**

90 **On page seventy-five, by striking subdivision 41.2.d.3 and**
91 **inserting a new subdivision 41.2.d.3 to read as follows:**

92 **“41.2.d.3. When using urine as a screening mechanism, all**
93 **patient drug testing shall be observed to minimize the chance**
94 **of adulterating or substituting another individual’s urine.”;**

95 **And,**

96 **On page eighty-one, by striking subdivision 44.5.d.1. and**
97 **inserting a new subdivision 44.5.d.1. to read as follows:**

98 **“44.5.d.1. Maintenance treatment dosage levels of**
99 **pregnant clients shall be maintained at the lowest possible**
100 **dosage level that is a medically appropriate therapeutic dose**
101 **as determined by the medical director or clinic physician**
102 **taking the pregnancy into account.”**

103 **(b) The legislative rule filed in the State Register on**
104 **January 7, 2013, authorized under the authority of section**
105 **nine, article five-h, chapter sixteen of this code, relating to the**
106 **Department of Health and Human Resources (chronic pain**
107 **management clinic licensure, 69 CSR 8), is authorized with**
108 **the following amendments:**

109 On page one, subsection 1.4, line eleven, following the
110 number "2013.", by inserting the following words:

111 "This rule is effective upon the date specified in an
112 emergency rule promulgated by the Department of Health and
113 Human Resources as being the date funding for
114 implementation of Chronic Pain Management Clinic Licensure
115 will become available pursuant to a duly enacted appropriation
116 bill authorizing the expenditure of funds for that purpose.";

117 On page four, subsection 3.1., by striking out all of
118 subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in
119 lieu thereof the following:

120 3.1.a. The primary component of the medical practice of
121 the clinic, facility or office is treatment of chronic pain for non-
122 malignant conditions;

123 3.1.b. More than fifty percent of patients in any one month
124 of the prescribers are provided treatment for chronic pain for
125 nonmalignant conditions and are prescribed, administered or
126 dispensed tramadol, carisoprodol, opioid drug products or
127 other Schedule II or Schedule III controlled substances for
128 such diagnosis;

129 3.1.c. The calculation of more than fifty percent of patients
130 will be calculated by dividing the number of unique patient
131 encounters at the clinic, facility or office during any one month
132 for a diagnosis of chronic nonmalignant pain and pursuant to
133 such diagnosis of chronic nonmalignant pain were prescribed,
134 administered or dispensed tramadol, carisoprodol, opioid
135 drugs or other Scheduled II or Scheduled III controlled
136 substances by the total number of all patient encounters at the
137 clinic, facility or office during any month; and

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138 3.1.d. Patients receiving tramadol, carisoprodol, opioid
139 drug products or other Schedule II or Schedule III controlled
140 substances for treatment of an injury or illness that lasts or is
141 expected to last thirty days or less shall not be included in the
142 calculation of more than fifty percent of all patients.” and
143 renumbering the remaining subdivisions;

144 On page five, by inserting a new paragraph, 3.2.i.2., to
145 read as follows:

146 “3.2.i.2. Medical practices, clinics or offices in which a
147 physician treats an average of 20 or fewer patients a day with
148 any diagnosis in any one month, and in which the physician
149 holds a Competency Certification in Controlled Substances
150 Management.”;

151 And,

152 On page thirteen, subparagraph 6.5.b.2.B., after the words
153 “Osteopathic Specialist;” by inserting the words “hold
154 Competency Certification in Controlled Substances
155 Management;”.

156 (c) The legislative rule filed in the State Register on
157 August 30, 2012, authorized under the authority of section
158 four, article two-b, chapter forty-nine of this code, modified by
159 the Department of Health and Human Resources to meet the
160 objections of the Legislative Rule-Making Review Committee
161 and refiled in the State Register on January 15, 2013, relating
162 to the Department of Health and Human Resources (minimum
163 licensing requirements for residential child care and treatment
164 facilities for children and transitioning adults in West Virginia,
165 78 CSR 3), is authorized, with the following amendment:

166 On page fifty-two, paragraph 11.2.a.3., line five, by
167 striking out the word “Training” and inserting the word
168 “Certification”.

§64-5-3. Health Care Authority.

1 The legislative rule filed in the State Register on May 14,
2 2012, authorized under the authority of section seven, article
3 twenty-nine-g, chapter sixteen of this code, modified by the
4 Health Care Authority to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on July 19, 2012, relating to the Health Care
7 Authority to promulgate a legislative rule relating to (West
8 Virginia Health Information Network, 65 CSR 28), is
9 authorized.

§64-5-4. Bureau of Senior Services.

1 The legislative rule filed in the State Register on August
2 31, 2012, authorized under the authority of section fifteen,
3 article five-p, chapter sixteen of this code, modified by the
4 Bureau of Senior Services to meet the objections of the
5 Legislative Rule-making Review Committee and refiled in the
6 State Register on January 17, 2013, relating to the Bureau of
7 Senior Services (in-home care worker registry, 76 CSR 2), is
8 authorized with the following amendment:

9 On page two, subdivision 4.1(i), by striking the word
10 “training” and inserting the word “certification”.

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

Rocky Ferguson
.....
~~Member~~ ~~Chairman~~ ~~Senate~~ ~~Committee~~

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

SECRETARY OF STATE

2013 MAY -2 PM 4:01

FILED

Gregory A. Day
.....
Clerk of the House of Delegates

Jerry A. ...
.....
President of the Senate

...
.....
Speaker of the House of Delegates

The within *is approved* this the *2nd*
May
Day of, 2013.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm