

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 475

BY SENATORS TARR, WOELFEL, TAKUBO, DEEDS,

AZINGER, PLYMALE, AND JEFFRIES

[Passed March 9, 2024; in effect 90 days from

passage (June 7, 2024)]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2024 MAR 21 P 5:38

FILED

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1 AN ACT to amend and reenact §16-59-1, §16-59-2, and §16-59-3, of the Code of West Virginia,
2 1931, as amended; to amend said code by adding thereto a new section, designated §16-
3 59-4; and to amend and reenact §16-62-1 and §16-62-2 of said code, all relating to
4 recovery residences; defining terms; amending the accreditation program to include
5 protecting residents from human trafficking and patient brokering; requiring the collection
6 of data from recovery residences; requiring the data collected be uniform among recovery
7 residences; requiring rulemaking regarding the data to be collected; requiring stakeholder
8 engagement to develop the rules; setting forth minimum data content; providing that the
9 data shall be shared; providing privacy restrictions on data; requiring documentation
10 verifying initial and continued registration be submitted; permitting an immediate jeopardy
11 notice to be served in person; prohibiting recovery residence that has received a
12 suspension or revocation notice from taking new residents; providing procedure for
13 immediate jeopardy; permitting immediate revocation of certification if immediate jeopardy
14 is not corrected prior to certifying agency leaving the premises; requiring transfer of
15 residents in event immediate jeopardy is not corrected and setting forth timeframe;
16 prohibiting recovery residence without a certificate of compliance from receiving a referral
17 from stated entities; providing for a penalty if the referral is received in violation of this
18 article; deleting requirement that certifying agency maintain and publish a list of recovery
19 residences; clarifying that referral shall not be made unless recovery residence has a valid
20 certificate of compliance; prohibiting all recovery residences from receiving funds from a
21 resident that is in the form of a state benefit unless it holds a valid certificate of compliance;
22 increasing penalties for violations; requiring all recovery residences to register with the
23 Office of Health Facility Licensure and Certification; setting forth procedure for registration;
24 permitting fee; setting term of registration as one year; providing for penalty for failure to
25 register; providing due process; clarifying that recovery residences are subject to the
26 Patient Brokering Act; requiring the Office of the Inspector General to review data to

27 determine if violations of the Patient Brokering Act have occurred; requiring referral to
28 state, or local law-enforcement authorities to coordinate, investigate, or prosecute
29 violations; requiring state or local law enforcement to investigate referral; requiring the
30 Office of the Inspector General to receive data regarding recovery residences; specifying
31 document handling specifications; and creating criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 59. CERTIFICATION OF RECOVERY RESIDENCES AND REGISTRATION.

§16-59-1. Definitions.

1 As used in this article, the term:

2 "Certificate of compliance" means a certificate that is issued to a recovery residence by
3 the department's appointed certifying agency.

4 "Certified recovery residence" means a recovery residence that holds a valid certificate of
5 compliance.

6 "Director" means the Director of the Office of Health Facility Licensure and Certification,
7 or his or her designee.

8 "Department" means the Department of Human Services.

9 "Immediate jeopardy" means an issue of non-compliance that places the health and safety
10 of residents of the recovery residence at risk for serious injury, serious harm, serious impairment,
11 or death.

12 "Inspector General" means the Inspector General of the Office of the Inspector General
13 as described in §16B-2-1 of this code.

14 "Recovery residence" means a single-family, drug-free, and alcohol-free residential
15 dwelling unit, or other form of group housing, that is offered or advertised by any person or entity
16 as a residence that provides a drug-free and alcohol-free living environment for the purposes of
17 promoting sustained, long-term recovery from substance use disorder.

§16-59-2. Voluntary certification of recovery residences.

1 (a) The department shall contract with an entity to serve as the certifying agency for a
2 voluntary certification program for drug-free and alcohol-free recovery residences based upon
3 standards determined by the National Alliance for Recovery Residences (NARR) or a similar
4 entity. The certifying agency shall establish and implement an accreditation program for drug-free
5 and alcohol-free recovery residences that shall maintain nationally recognized standards that:

6 (1) Uphold industry best practices and support a safe, healthy, and effective recovery
7 environment;

8 (2) Evaluate the residence's ability to assist persons in achieving long-term recovery
9 goals;

10 (3) Protect residents of drug- and alcohol-free housing against unreasonable and unfair
11 practices in setting and collecting fee payments.

12 (4) Protect residents from human trafficking that may occur in the recovery residence
13 setting.

14 (5) Protect patients from predatory practices that lead to patient brokering.

15 (b) The department shall require the recovery residence to collect, retain, and submit the
16 following:

17 (1) Documentation verifying certification as specified and administered by the certifying
18 agency;

19 (2) If a municipality or county offers or requires verification of compliance with local
20 building, maximum occupancy, fire safety, and sanitation codes applicable to single-family
21 housing, documentation of verification by the municipality or county where the recovery residence
22 is located stating that the recovery residence is in compliance.

23 (3) Data from each registered recovery residence at intervals determined by the
24 department, but not less than annually. The data shall be uniform across all recovery residences.
25 The department, in conjunction with applicable stakeholders to include, but not be limited to, the
26 Office of the Inspector General, the Superintendent, or designee, of the West Virginia State

27 Police, the West Virginia Sheriff's Association, and a representative of West Virginia National
28 Alliance for Recovery Residences, shall propose rules for legislative approval in accordance with
29 the provisions of §29A-3-1 *et seq.* to specify the data to be collected. The data variables shall
30 include, but not be limited to, variables to allow the department, certifying agency, the Office of
31 the Inspector General, and the West Virginia Fusion Center-Human Trafficking Division to conduct
32 an analysis of the performance of recovery residences and to determine if patient brokering or
33 human trafficking is occurring. The data shall be shared in personally identifiable form with the
34 Office of the Inspector General, the certifying agency, and the West Virginia Fusion Center-
35 Human Trafficking Division, with the appropriate Health Insurance Portability and Accountability
36 Act safeguards in place to protect the data in transmission and in storage.

37 (4) Documentation verifying initial and continued registration as required in §16-59-4 of
38 this code.

39 (c) If a municipality or county offers or requires verification of compliance with local
40 building, maximum occupancy, fire safety, and sanitation codes applicable to single-family
41 housing, the municipality or county must perform requested or required inspections within 30 days
42 of receiving a request for verification. If a residence is located within a municipality or county that
43 offers or requires verification of compliance with local building, maximum occupancy, fire safety,
44 and sanitation codes applicable to single-family housing, and the municipality or county fails to
45 perform requested or required inspections within 30 days of receiving a request for verification,
46 the residence may apply for and be granted certification directly through the certifying agency
47 without the aforementioned verification.

48 (d) Upon receiving a complete application, the certifying agency shall evaluate the
49 residence to determine if the residence is in compliance with national best-practice standards,
50 health, and safety requirements. Additionally, any application of the items specified in this section
51 must comply with the Fair Housing Act, 42 U.S.C. §3601 *et seq.* and the Americans with
52 Disabilities Act of 2008, 42 U.S.C. §12101 *et seq.*

53 (1) If it is determined that the residence is in compliance, the certification agency shall
54 issue a certificate of compliance to the recovery residence operator for the specific recovery
55 residence location set forth in the application.

56 (2) Each residence location, even if operated by the same person or entity, must maintain
57 a certificate of compliance for the purposes of this article.

58 (e) The certifying agency may suspend or revoke a certificate of compliance if the recovery
59 residence is not in compliance with any provision of this section or has failed to remedy any
60 deficiency identified in writing and served by certified mail unless the deficiency is an immediate
61 jeopardy in which case it may be served in person. Suspension or revocation may take place after
62 a notice of deficiency is served and has existed for at least 30 days, except in cases of an
63 immediate jeopardy. After receipt of a suspension or revocation notice, the recovery residence is
64 prohibited from accepting new residents and may only work to transfer residents to another
65 certified recovery residence. If the certifying agency determines that an immediate jeopardy
66 exists, then the operator will be provided a notice of deficiency, at the time of the certification visit,
67 and the recovery residence shall immediately take actions to correct the listed deficiencies before
68 the certification agency departs the premises. If the operator is unable to correct all of the listed
69 deficiencies prior to the certifying agency departing the premises, then the certifying agency has
70 the authority to revoke any applicable certification immediately and give the operator of the
71 recovery residence up to five days to transfer existing residents to another certified recovery
72 residence.

73 (f) Notwithstanding any other provision to the contrary, the certifying agency shall
74 implement and maintain a process by which a residence whose certification has been suspended
75 or revoked may apply for, and be granted, reinstatement. If a municipality or county offers or
76 requires verification of compliance with local building, maximum occupancy, fire safety, and
77 sanitation codes applicable to single-family housing, and if the residence's certification suspended
78 or revoked for noncompliance with local building, maximum occupancy, fire safety, and sanitation

79 codes applicable to single-family housing, the municipality or county may charge a fee of up to
80 \$100 for any requested reinspection of a recovery residence by the residence seeking
81 reinstatement.

82 (g) The department shall periodically evaluate the quality, integrity, and efficacy of the
83 accreditation program developed. The department shall promulgate rules subject to legislative
84 approval in accordance with §29A-3-1 *et seq.* of this code to implement this section that shall
85 include a process for receiving complaints against drug-free and alcohol-free recovery residences
86 and criteria by which such residences' certifications can be revoked.

87 (h) A person may not advertise to the public any recovery residence as a "certified
88 recovery residence" unless the recovery residence has first secured a certificate of compliance
89 under this section. A person who violates this subsection commits a misdemeanor, punishable by
90 a fine of not less than \$1,000 nor more than \$5,000 for each infraction.

91 (i) This article does not permit a structure that would not be normally classified as a single-
92 family dwelling to be exempt from the state building code or fire code.

93 (j) Nothing herein shall be read to require any recovery residence to obtain certifications
94 set forth herein in order to conduct operations: *Provided*, That a recovery residence without a
95 valid certificate of compliance, as provided in §16-59-2 of this code, is prohibited from receiving
96 a referral or receiving a person released from prison for the placement of any prisoner, parolee,
97 probationer, or prospective, current, or discharged patient, or client from the Division of
98 Corrections and Rehabilitation, the Parole Board, the county probation offices, day report center,
99 municipal courts, or a medical or clinical treatment facility that receives funds for its operations
100 from the State Treasury. A person who violates this subsection commits a misdemeanor,
101 punishable by a fine of not less than \$1,000 nor more than \$5,000 for each infraction.

§16-59-3. Referrals to recovery residences; prohibitions; receipt of state funds.

1 (a) The Division of Corrections and Rehabilitation, the Parole Board, county probation
2 offices, day report centers, municipal courts, and a medical or clinical treatment facility that

3 receives any funds for its operations from the State Treasury shall not make a referral of any
4 prisoner, parolee, probationer, or prospective, current, or discharged patient, or client to a
5 recovery residence unless the recovery residence holds a valid certificate of compliance as
6 provided in §16-59-2 of this code.

7 (b) No recovery residence is eligible to receive funds from any source within the State
8 Treasury unless it holds a valid certificate of compliance as provided in §16-59-2 of this code.

9 (c) No recovery residence is eligible to receive funds from a resident that is in the form of
10 a state benefit, including, but not limited to, Medicaid, Temporary Assistance for Needy Families,
11 or the Supplemental Nutrition Assistance Program, unless it holds a valid certificate of compliance
12 from the certifying agency as provided in §16-59-2 of this code. The certifying agency may set
13 forth additional requirements for the appropriate use of such benefits within a recovery residence.

14 (d) A state agency and a medical or clinical treatment facility that receive funds for its
15 operation from the State Treasury, that make referrals to recovery residences shall maintain
16 records of referrals to or from recovery residences.

17 (e) Nothing in this section requires a state agency or a clinical or medical provider to make
18 a referral of a person to a recovery residence.

19 (f) A person who violates this section commits a misdemeanor, punishable by a fine of not
20 less than \$1,000 nor more than \$5,000, unless otherwise specified.

§16-59-4. Registration of recovery residences.

1 (a) Prior to conducting business in the State of West Virginia a recovery residence shall
2 register with the Office of Health Facility Licensure and Certification. The director shall make an
3 application form available on its publicly accessible internet website that includes a request for
4 the following information:

5 (1) The identity, address, and telephone number of the applicant;

6 (2) The name, business address, and telephone number of the contact person for the
7 applicant;

8 (3) When applicable, the federal employer identification number for the applicant; and

9 (4) Any other information the director considers necessary and appropriate to establish a
10 complete registration of an applicant.

11 (b) *Term and fee.* —

12 (1) The terms of registration shall be one year from the date of issuance;

13 (2) The fee shall be submitted by the applicant with an application for registration. An
14 application fee for initial registration or renewal registration fee is nonrefundable;

15 (3) The amount of the initial registration fee and the renewal registration fee is \$250:
16 *Provided*, That the director may annually adjust the initial and renewal registration fee for inflation
17 based upon the consumer price index.

18 (c) *Registration.* —

19 (1) The director shall issue a registration, as appropriate, to an applicant when the director
20 determines an applicant has submitted a complete application and paid the required registration
21 fee.

22 (2) The registration may be in paper or electronic form, is nontransferable, and shall
23 prominently list the expiration date of the registration.

24 (3) A list of all recovery residences shall be made available on the director's publicly
25 accessible internet website.

26 (d) *Penalties.* —

27 (1) A civil monetary penalty of up to \$20,000 a day may be assessed against an owner
28 who operates, owns, or manages an unregistered recovery residence. Each day of the continuing
29 violation after the civil monetary penalty is assessed may be considered a separate violation. The
30 initial notice of non-compliance shall be provided to the owner via certified mail, return receipt
31 requested.

32 (B) If the recovery residence is not registered within 30 days from the date of receipt of
33 the initial notice, the director shall notify the certifying agency to revoke the recovery residence's

34 certificate of compliance, issued pursuant to §16-59-2 of this code, for non-compliance with this
35 section.

36 (C) If the recovery residence is not registered within 30 days from the date of receipt of
37 the initial notice, and if such recovery residence does not have a certificate of compliance, then
38 the director shall issue a closure notice to the recovery residence for non-compliance with this
39 section.

40 (e) *Due process.* —

41 (1) Within 10 days of the date of receipt of a notice provided pursuant to subsection (d),
42 the recovery residence's owner may submit a request for an administrative hearing before the
43 Board of Review for an informal meeting to address the notice and the reason stated therefor.

44 (2) The recovery residence's owner or owners and the Office of Health Facility Licensure
45 and Certification will be entitled to representation by legal counsel at the informal meeting and at
46 the administrative hearing at their own expense, respectively.

47 (3) All of the pertinent provisions of §29A-5-1 *et seq.* of this code and applicable legislative
48 rules governing administrative hearings for the Board of Review shall apply to and govern any
49 formal hearing authorized by this article.

50 (4) If the recovery residence's owner fails to request a hearing within the time frame
51 specified, he or she shall be subject to the full limitation, enforcement action, penalty, or any
52 combination thereof, imposed pursuant to this section.

53 (5) The filing of a request for an administrative hearing or an informal meeting does not
54 stay or supersede the enforcement of a limitation, enforcement action, penalty, or any
55 combination thereof, imposed pursuant to this section.

56 (6) Any party who is dissatisfied with the decision of the Board of Review as a result of a
57 formal hearing provided in this section, may within 30 days after receiving notice of the decision,
58 petition the West Virginia Intermediate Court of Appeals, in term or vacation, for judicial review of
59 the decision.

60 (7) The court may affirm, modify, or reverse, the decision of the Board of Review and
61 either the applicant or the registrant, or the Inspector General may appeal the court's decision to
62 the West Virginia Supreme Court of Appeals.

63 (8) Notwithstanding the existence of, or pursuant to any other remedy, the Inspector
64 General may, in the manner provided by law, maintain an action in the name of the state for an
65 injunction against any person, partnership, association, or corporation, to restrain or prevent the
66 establishment, conduct, management, or operation of any recovery residence for violation of any
67 provision of this section or any rule lawfully promulgated thereunder without first obtaining a
68 registration in the manner herein provided.

ARTICLE 62. THE PATIENT BROKERING ACT.

§16-62-1. Definitions.

1 For the purposes of this article:

2 "Department" means the Department of Human Services.

3 "Health care provider or health care facility" means any person or entity licensed, certified,
4 or authorized by law to provide professional health care service in this state to a patient during
5 that patient's medical, remedial, or behavioral health care, treatment, or confinement.

6 "Health care provider network entity" means a corporation, partnership, or limited liability
7 company owned or operated by two or more health care providers and organized for the purpose
8 of entering into agreements with health insurers, health care purchasing groups, or the Medicare
9 or Medicaid program.

10 "Health insurer" means any insurance company authorized to transact health insurance in
11 the state, any insurance company authorized to transact health insurance or casualty insurance
12 in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity
13 providing health care benefits, any self-insurance plan, any health maintenance organization, any

14 prepaid health clinic, any prepaid limited health service organization, any multiple-employer
15 welfare arrangement, or any fraternal benefit society providing health benefits to its members.

16 "Recovery residence" has the same meaning as set forth in §16-59-1 of this code.

§16-62-2. Patient brokering prohibited.

1 (a) It is unlawful for any person, including any health care provider, health care facility, or
2 recovery residence to:

3 (1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or
4 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to
5 induce the referral of a patient or patronage to or from a health care provider, health care facility
6 or recovery residence;

7 (2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or
8 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in
9 return for referring a patient or patronage to or from a health care provider, health care facility, or
10 recovery residence;

11 (3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or
12 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in
13 return for the acceptance or acknowledgment of treatment from a health care provider, health
14 care facility, or recovery residence;

15 (4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this
16 subsection; or

17 (5) Engage in any of the unlawful acts provided for in this subsection in regard to a
18 recovery residence as defined in §16-59-1 of this code;

19 (b) Penalties –

20 (1) Any person who violates the provisions of subsection (a) of this section is guilty of a
21 felony and, upon conviction thereof, shall be fined not more than \$50,000, or imprisoned in a state

22 correctional facility for not less than one year nor more than five years, or both fined and
23 imprisoned.

24 (2) Notwithstanding the provisions of subdivision (1) of this section, any person who
25 violates subsection (a) of this section, where the prohibited conduct involves 10 or more patients,
26 is guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000, or
27 imprisoned in a state correctional facility not less than two years nor more than five years, or both
28 fined and imprisoned.

29 (c) The Office of the Inspector General shall develop a tool that facilitates the submission
30 of complaints. The Office of the Inspector General shall investigate complaints, review data for
31 violations of this article, and shall refer matters to state, or local law-enforcement authorities to
32 coordinate, investigate, or prosecute violations of this article.

33 (d) Law enforcement shall investigate each referral upon receipt for violation this article.

34 (e) The Office of the Inspector General shall receive data from the department related to
35 recovery residences based upon intervals determined by the department, but not less than
36 annually. This data may contain personally identifiable health information. It shall be transmitted
37 and stored in conformity with applicable Health Insurance and Portability and Accountability Act
38 standards.

39 (f) The Office of the Inspector General and the certifying agency set forth in §16-59-2 *et*
40 *seq.* of this code may coordinate investigations as further set forth in legislative rule.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

Joe Linn
.....
Clerk of the Senate

Steve Harrison
.....
Clerk of the House of Delegates

FILED
2024 MAR 27 P 5:38
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the Senate.

In effect 90 days from passage.

Cy P. Blawie
.....
President of the Senate

Ben Chandler
.....
Speaker of the House of Delegates

The within is *approved* this the *27th*
Day of *March* 2024.

James Owens
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 19 2024

Time 3:20 pm