

1 **ENROLLED**

2 **H. B. 3075**

3
4 (By Delegates Perdue, Hatfield, Border,
5 Reynolds and Morgan)

6
7 [Passed March 10, 2011; in effect ninety days from passage.]
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9

10 AN ACT to amend and reenact §16-1-4 of the Code of West Virginia,
11 1931, as amended, relating to increasing the time period in
12 the hold-harmless provision, when distributing state aid to
13 local health departments and basic public health services
14 funds, from three years to four years.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §16-1-4 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

19 **§16-1-4. Proposal of rules by the secretary.**

20 The secretary may propose rules in accordance with the
21 provisions of article three, chapter twenty-nine-a of this code
22 that are necessary and proper to effectuate the purposes of this
23 chapter. The secretary may appoint or designate advisory councils
24 of professionals in the areas of hospitals, nursing homes, barbers
25 and beauticians, postmortem examinations, mental health and

1 intellectual disability centers and any other areas necessary to
2 advise the secretary on rules.

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

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

23 (b) The sanitary condition of all institutions and schools,
24 whether public or private, public conveyances, dairies,
25 slaughterhouses, workshops, factories, labor camps, all other

1 places open to the general public and inviting public patronage or
2 public assembly, or tendering to the public any item for human
3 consumption and places where trades or industries are conducted;

4 (c) Occupational and industrial health hazards, the sanitary
5 conditions of streams, sources of water supply, sewerage facilities
6 and plumbing systems and the qualifications of personnel connected
7 with any of those facilities, without regard to whether the
8 supplies or systems are publicly or privately owned; and the design
9 of all water systems, plumbing systems, sewerage systems, sewage
10 treatment plants, excreta disposal methods and swimming pools in
11 this state, whether publicly or privately owned;

12 (d) Safe drinking water, including:

13 (1) The maximum contaminant levels to which all public water
14 systems must conform in order to prevent adverse effects on the
15 health of individuals and, if appropriate, treatment techniques
16 that reduce the contaminant or contaminants to a level which will
17 not adversely affect the health of the consumer. The rule shall
18 contain provisions to protect and prevent contamination of
19 wellheads and well fields used by public water supplies so that
20 contaminants do not reach a level that would adversely affect the
21 health of the consumer;

22 (2) The minimum requirements for: Sampling and testing;
23 system operation; public notification by a public water system on
24 being granted a variance or exemption or upon failure to comply
25 with specific requirements of this section and rules promulgated

1 under this section; record keeping; laboratory certification; as
2 well as procedures and conditions for granting variances and
3 exemptions to public water systems from state public water systems
4 rules; and

5 (3) The requirements covering the production and distribution
6 of bottled drinking water and may establish requirements governing
7 the taste, odor, appearance and other consumer acceptability
8 parameters of drinking water;

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

13 (f) The training and examination requirements for emergency
14 medical service attendants and emergency medical care technician-
15 paramedics; the designation of the health care facilities, health
16 care services and the industries and occupations in the state that
17 must have emergency medical service attendants and emergency
18 medical care technician-paramedics employed and the availability,
19 communications and equipment requirements with respect to emergency
20 medical service attendants and to emergency medical care
21 technician-paramedics: *Provided*, That any regulation of emergency
22 medical service attendants and emergency medical care technician-
23 paramedics may not exceed the provisions of article four-c of this
24 chapter;

25 (g) The health and sanitary conditions of establishments

1 commonly referred to as bed and breakfast inns. For purposes of
2 this article, "bed and breakfast inn" means an establishment
3 providing sleeping accommodations and, at a minimum, a breakfast
4 for a fee: *Provided*, That the secretary may not require an owner of
5 a bed and breakfast providing sleeping accommodations of six or
6 fewer rooms to install a restaurant-style or commercial food
7 service facility: *Provided, however*, That the secretary may not
8 require an owner of a bed and breakfast providing sleeping
9 accommodations of more than six rooms to install a restaurant-type
10 or commercial food service facility if the entire bed and breakfast
11 inn or those rooms numbering above six are used on an aggregate of
12 two weeks or less per year;

13 (h) Fees for services provided by the Bureau for Public Health
14 including, but not limited to, laboratory service fees,
15 environmental health service fees, health facility fees and permit
16 fees;

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

19 (j) Opioid treatment programs duly licensed and operating
20 under the requirements of chapter twenty-seven of this code. The
21 Health Care Authority shall develop new certificate of need
22 standards, pursuant to the provisions of article two-d of this
23 chapter, that are specific for opioid treatment program facilities.
24 No applications for a certificate of need for opioid treatment
25 programs shall be approved by the Health Care Authority as of the

1 effective date of the 2007 amendments to this subsection. The
2 secretary shall promulgate revised emergency rules to govern
3 licensed programs: *Provided*, That there is a moratorium on the
4 licensure of new opioid treatment programs that do not have a
5 certificate of need as of the effective date of the 2007 amendments
6 to this subsection, which shall continue until the Legislature
7 determines that there is a necessity for additional opioid
8 treatment facilities in West Virginia. The secretary shall file
9 revised emergency rules with the Secretary of State to regulate
10 opioid programs in compliance with subsections (1) through (9),
11 inclusive, of this section: *Provided, however*, That any opioid
12 treatment program facility that has received a certificate of need
13 pursuant to article two-d, of this chapter by the Health Care
14 Authority shall be permitted to proceed to license and operate the
15 facility. All existing opioid treatment programs shall be in
16 compliance within one hundred eighty days of the effective date of
17 the revised emergency rules as required herein. The revised
18 emergency rules shall provide at a minimum:

19 (1) That the initial assessment prior to admission for entry
20 into the opioid treatment program shall include an initial drug
21 test to determine whether an individual is either opioid addicted
22 or presently receiving methadone for an opioid addiction from
23 another opioid treatment program. The patient may be admitted to
24 the program if there is a positive test for either opioids or
25 methadone or there are objective symptoms of withdrawal, or both,

1 and all other criteria set forth in the rule for admission into an
2 opioid treatment program are met: *Provided*, That admission to the
3 program may be allowed to the following groups with a high risk of
4 relapse without the necessity of a positive test or the presence of
5 objective symptoms: Pregnant women with a history of opioid abuse,
6 prisoners or parolees recently released from correctional
7 facilities, former clinic patients who have successfully completed
8 treatment but who believe themselves to be at risk of imminent
9 relapse and HIV patients with a history of intravenous drug use.

10 (2) That within seven days of the admission of a patient, the
11 opioid treatment program shall complete an initial assessment and
12 an initial plan of care. Subsequently, the opioid treatment
13 program shall develop a treatment plan of care by the thirtieth day
14 after admission and attach to the patient's chart no later than
15 five days after such plan is developed. The treatment plan is to
16 reflect that detoxification is an option for treatment and
17 supported by the program.

18 (3) That each opioid treatment program shall report and
19 provide statistics to the Department of Health and Human Resources
20 at least semiannually which includes the total number of patients;
21 the number of patients who have been continually receiving
22 methadone treatment in excess of two years, including the total
23 number of months of treatment for each such patient; the state
24 residency of each patient; the number of patients discharged from
25 the program, including the total months in the treatment program

1 prior to discharge and whether the discharge was for:

2 (A) Termination or disqualification;

3 (B) Completion of a program of detoxification;

4 (C) Voluntary withdrawal prior to completion of all
5 requirements of detoxification as determined by the opioid
6 treatment program; or

7 (D) An unexplained reason.

8 (4) That random drug testing of patients be conducted during
9 the course of treatment. For purposes of these rules, random drug
10 testing shall mean that each patient of an opioid treatment program
11 facility has a statistically equal chance of being selected for
12 testing at random and at unscheduled times. Any refusal to
13 participate in a random drug test shall be considered a positive
14 test: *Provided*, That nothing contained in this section or the
15 legislative rules promulgated in conformity herewith will preclude
16 any opioid treatment program from administering such additional
17 drug tests as determined necessary by the opioid treatment program.

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

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

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

23 (C) Benzodiazepine including diazepam, lorazepam, clonazepam
24 and alprazolam;

25 (D) Cocaine;

1 (E) Methamphetamine or amphetamine; and

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

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

7 (6) That a positive drug test result after the first six
8 months in an opioid treatment program shall result in the
9 following:

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

12 (1) Provide mandatory and documented weekly counseling to the
13 patient, which shall include weekly meetings with a counselor who
14 is licensed, certified or enrolled in the process of obtaining
15 licensure or certification in compliance with the rules and on
16 staff at the opioid treatment program;

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

19 (B) Upon a second positive drug test result within six months
20 of a previous positive drug test result, the opioid treatment
21 program shall:

22 (1) Provide mandatory and documented weekly counseling, which
23 shall include weekly meetings with a counselor who is licensed,
24 certified or enrolled in the process of obtaining licensure or
25 certification in compliance with the rules and on staff at the

1 opioid treatment program;

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

4 (3) Provide mandatory documented treatment team meetings with
5 the patient.

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

8 (1) Provide mandatory and documented weekly counseling, which
9 shall include weekly meetings with a counselor who is licensed,
10 certified or enrolled in the process of obtaining licensure or
11 certification in compliance with the rules and on staff at the
12 opioid treatment program;

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

15 (3) Provide mandatory and documented treatment team meetings
16 with the patient which will include, at a minimum: The need for
17 continuing treatment; a discussion of other treatment alternatives;
18 and the execution of a contract with the patient advising the
19 patient of discharge for continued positive drug tests.

20 (D) Upon a fourth positive drug test within a six-month
21 period, the patient shall be immediately discharged from the opioid
22 treatment program or, at the option of the patient, shall
23 immediately be provided the opportunity to participate in a twenty-
24 one day detoxification plan, followed by immediate discharge from
25 the opioid treatment program.

1 (7) That the opioid treatment program must report and provide
2 statistics to the Department of Health and Human Resources
3 demonstrating compliance with the random drug test rules including
4 confirmation that:

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

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

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

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

14 (9) That the Office of Health Facility Licensure and
15 Certification develop policies and procedures in conjunction with
16 the Board of Pharmacy that will allow access to the Prescription
17 Drug Registry maintained by the Board of Pharmacy before
18 administration of methadone or other treatment in an opioid
19 treatment program, after any positive drug test, and at each
20 ninety-day treatment review to ensure the patient is not seeking
21 prescription medication from multiple sources.

22 (k) The secretary shall propose a rule for legislative
23 approval in accordance with the provisions of article three,
24 chapter twenty-nine-a of this code for the distribution of state
25 aid to local health departments and basic public health services

1 funds.

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

3 (A) Base allocation amount for each county;

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

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

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

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

18 (2) The Legislature finds that an emergency exists and,
19 therefore, the secretary shall file an emergency rule to implement
20 the provisions of this section pursuant to the provisions of
21 section fifteen, article three, chapter twenty-nine-a of this code.

22 The emergency rule is subject to the prior approval of the
23 Legislative Oversight Commission on Health and Human Resources
24 Accountability prior to filing with the Secretary of State.

25 (1) Other health-related matters which the department is

1 authorized to supervise and for which the rule-making authority has
2 not been otherwise assigned.