

**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

# ENROLLED

## H. B. 3075

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

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[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 (l) 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*

\_\_\_\_\_  
*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
*Governor*