

1 **H. B. 2524**

2
3 (By Delegates Perdue, Perry, Eldridge,
4 Ellington, Lawrence, Poore and Stagers)

5 [Introduced February 18, 2013; referred to the
6 Committee on Health and Human Resources then the Judiciary.]

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10 A BILL to amend and reenact §16-1-4 of the Code of West Virginia,
11 1931, as amended, relating to requiring opioid treatment
12 programs to report and provide statistics to the Legislative
13 Oversight Commission on Health and Human Resources
14 Accountability; deleting outdated language; and making
15 stylistic changes.

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

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

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

20 **§16-1-4. Proposal of rules by the secretary.**

21 (a) The secretary may propose rules in accordance with ~~the~~
22 ~~provisions of~~ article three, chapter twenty-nine-a of this code
23 that are necessary and proper to effectuate the purposes of this
24 chapter. The secretary may appoint or designate advisory councils

1 of professionals in the areas of hospitals, nursing homes, barbers
2 and beauticians, postmortem examinations, mental health and
3 intellectual disability centers and any other areas necessary to
4 advise the secretary on rules.

5 (b) The rules may include, but are not limited to, the
6 regulation of:

7 (1) Land usage endangering the public health: *Provided*, That
8 no rules may be promulgated or enforced restricting the subdivision
9 or development of any parcel of land within which the individual
10 tracts, lots or parcels exceed two acres each in total surface area
11 and which individual tracts, lots or parcels have an average
12 frontage of not less than one hundred fifty feet even though the
13 total surface area of the tract, lot or parcel equals or exceeds
14 two acres in total surface area, and which tracts are sold, leased
15 or utilized only as single-family dwelling units. Notwithstanding
16 the provisions of this subsection, nothing in this section may be
17 construed to abate the authority of the department to:

18 (A) Restrict the subdivision or development of a tract for any
19 more intense or higher density occupancy than a single-family
20 dwelling unit;

21 (B) Propose or enforce rules applicable to single-family
22 dwelling units for single-family dwelling unit sanitary sewerage
23 disposal systems; or

24 (C) Restrict any subdivision or development which might

1 endanger the public health, the sanitary condition of streams or
2 sources of water supply;

3 (2) The sanitary condition of all institutions and schools,
4 whether public or private, public conveyances, dairies,
5 slaughterhouses, workshops, factories, labor camps, all other
6 places open to the general public and inviting public patronage or
7 public assembly, or tendering to the public any item for human
8 consumption and places where trades or industries are conducted;

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

17 (4) Safe drinking water, including:

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

1 contaminants do not reach a level that would adversely affect the
2 health of the consumer;

3 (B) The minimum requirements for: Sampling and testing; system
4 operation; public notification by a public water system on being
5 granted a variance or exemption or upon failure to comply with
6 specific requirements of this section and rules promulgated under
7 this section; record keeping; laboratory certification; as well as
8 procedures and conditions for granting variances and exemptions to
9 public water systems from state public water systems rules; and

10 (C) The requirements covering the production and distribution
11 of bottled drinking water and may establish requirements governing
12 the taste, odor, appearance and other consumer acceptability
13 parameters of drinking water;

14 (5) Food and drug standards, including cleanliness,
15 proscription of additives, proscription of sale and other
16 requirements in accordance with article seven of this chapter as
17 are necessary to protect the health of the citizens of this state;

18 (6) The training and examination requirements for emergency
19 medical service attendants and emergency medical care technician-
20 paramedics; the designation of the health care facilities, health
21 care services and the industries and occupations in the state that
22 must have emergency medical service attendants and emergency
23 medical care technician-paramedics employed and the availability,
24 communications and equipment requirements with respect to emergency

1 medical service attendants and to emergency medical care
2 technician-paramedics. Any regulation of emergency medical service
3 attendants and emergency medical care technician-paramedics may not
4 exceed the provisions of article four-c of this chapter;

5 (7) The health and sanitary conditions of establishments
6 commonly referred to as bed and breakfast inns. For purposes of
7 this article, "bed and breakfast inn" means an establishment
8 providing sleeping accommodations and, at a minimum, a breakfast
9 for a fee. The secretary may not require an owner of a bed and
10 breakfast providing sleeping accommodations of six or fewer rooms
11 to install a restaurant-style or commercial food service facility.
12 The secretary may not require an owner of a bed and breakfast
13 providing sleeping accommodations of more than six rooms to install
14 a restaurant-type or commercial food service facility if the entire
15 bed and breakfast inn or those rooms numbering above six are used
16 on an aggregate of two weeks or less per year;

17 (8) Fees for services provided by the Bureau for Public Health
18 including, but not limited to, laboratory service fees,
19 environmental health service fees, health facility fees and permit
20 fees;

21 (9) The collection of data on health status, the health system
22 and the costs of health care;

23 (10) Opioid treatment programs duly licensed and operating
24 under the requirements of chapter twenty-seven of this code.

1 (A) The Health Care Authority shall develop new certificate of
2 need standards, pursuant to ~~the provisions of~~ article two-d of this
3 chapter, that are specific for opioid treatment program facilities.

4 (B) No applications for a certificate of need for opioid
5 treatment programs may be approved by the Health Care Authority. ~~as~~
6 ~~of the effective date of the 2007 amendments to this subsection.~~

7 (C) There is a moratorium on the licensure of new opioid
8 treatment programs ~~that do not have a certificate of need as of the~~
9 ~~effective date of the 2007 amendments to this subsection,~~ which
10 shall continue until the Legislature determines that there is a
11 necessity for additional opioid treatment facilities in West
12 Virginia.

13 (D) The secretary shall file revised emergency rules with the
14 Secretary of State to regulate opioid treatment programs in
15 compliance with ~~the provisions of~~ this section. Any opioid
16 treatment program facility that has received a certificate of need
17 pursuant to article two-d, of this chapter by the Health Care
18 Authority shall be permitted to proceed to license and operate the
19 facility.

20 (E) All existing opioid treatment programs shall be subject to
21 monitoring by the secretary. All staff working or volunteering at
22 opioid treatment programs shall complete the minimum education,
23 reporting and safety training criteria established by the
24 secretary. All existing opioid treatment programs shall be in

1 compliance within one hundred eighty days of the effective date of
2 the revised emergency rules as required herein. The revised
3 emergency rules shall provide at a minimum:

4 (I) That the initial assessment prior to admission for entry
5 into the opioid treatment program shall include an initial drug
6 test to determine whether an individual is either opioid addicted
7 or presently receiving methadone for an opioid addiction from
8 another opioid treatment program.

9 (ii) The patient may be admitted to the opioid treatment
10 program if there is a positive test for either opioids or methadone
11 or there are objective symptoms of withdrawal, or both, and all
12 other criteria set forth in the rule for admission into an opioid
13 treatment program are met. Admission to the program may be allowed
14 to the following groups with a high risk of relapse without the
15 necessity of a positive test or the presence of objective symptoms:
16 Pregnant women with a history of opioid abuse, prisoners or
17 parolees recently released from correctional facilities, former
18 clinic patients who have successfully completed treatment but who
19 believe themselves to be at risk of imminent relapse and HIV
20 patients with a history of intravenous drug use.

21 (iii) That within seven days of the admission of a patient,
22 the opioid treatment program shall complete an initial assessment
23 and an initial plan of care.

24 (iv) That within thirty days after admission of a patient, the

1 opioid treatment program shall develop an individualized treatment
2 plan of care and attach the plan to the patient's chart no later
3 than five days after the plan is developed. The opioid treatment
4 program shall follow guidelines established by a nationally
5 recognized authority approved by the secretary and include a
6 recovery model in the individualized treatment plan of care. The
7 treatment plan is to reflect that detoxification is an option for
8 treatment and supported by the program; that under the
9 detoxification protocol the strength of maintenance doses of
10 methadone should decrease over time, the treatment should be
11 limited to a defined period of time, and participants are required
12 to work toward a drug-free lifestyle.

13 (v) That each opioid treatment program shall report and
14 provide statistics to the Department of Health and Human Resources
15 and the Legislative Oversight Commission on Health and Human
16 Resources Accountability at least semiannually which includes;

17 (I) The total number of patients;

18 (II) The number of patients who have been continually
19 receiving methadone treatment in excess of two years, including the
20 total number of months of treatment for each such patient;

21 (III) The state residency of each patient; and

22 (IV) The number of patients discharged from the program,
23 including the total months in the treatment program prior to
24 discharge and whether the discharge was for:

1 (A) Termination or disqualification;

2 (B) Completion of a program of detoxification;

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

6 (D) Successful completion of the individualized treatment care
7 plan; or

8 (E) An unexplained reason.

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

20 (vii) That all random drug tests conducted by an opioid
21 treatment program shall, at a minimum, test for the following:

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

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

1 (C) Benzodiazepine including diazepam, lorazepam, clonazepam
2 and alprazolam;

3 (D) Cocaine;

4 (E) Methamphetamine or amphetamine;

5 (F) Tetrahydrocannabinol, delta-9-tetrahydrocannabinol or
6 dronabinol or other similar substances; or

7 (G) Other drugs determined by community standards, regional
8 variation or clinical indication.

9 (viii) That a positive drug test is a test that results in the
10 presence of any drug or substance listed in this schedule and any
11 other drug or substance prohibited by the opioid treatment program.
12 A positive drug test result after the first six months in an opioid
13 treatment program shall result in the following:

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

16 (1) Provide mandatory and documented weekly counseling of no
17 less than thirty minutes to the patient, which shall include weekly
18 meetings with a counselor who is licensed, certified or enrolled in
19 the process of obtaining licensure or certification in compliance
20 with the rules and on staff at the opioid treatment program;

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

23 (B) Upon a second positive drug test result within six months
24 of a previous positive drug test result, the opioid treatment

1 program shall:

2 (1) Provide mandatory and documented weekly counseling of no
3 less than thirty minutes, which shall include weekly meetings with
4 a counselor who is licensed, certified or enrolled in the process
5 of obtaining licensure or certification in compliance with the
6 rules and on staff at the opioid treatment program;

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

9 (3) Provide mandatory documented treatment team meetings with
10 the patient.

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

13 (1) Provide mandatory and documented weekly counseling of no
14 less than thirty minutes, which shall include weekly meetings with
15 a counselor who is licensed, certified or enrolled in the process
16 of obtaining licensure or certification in compliance with the
17 rules and on staff at the opioid treatment program;

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

20 (3) Provide mandatory and documented treatment team meetings
21 with the patient which will include, at a minimum: The need for
22 continuing treatment; a discussion of other treatment alternatives;
23 and the execution of a contract with the patient advising the
24 patient of discharge for continued positive drug tests.

1 (D) Upon a fourth positive drug test within a six-month
2 period, the patient shall be immediately discharged from the opioid
3 treatment program or, at the option of the patient, shall
4 immediately be provided the opportunity to participate in a twenty-
5 one day detoxification plan, followed by immediate discharge from
6 the opioid treatment program: *Provided*, That testing positive
7 solely for tetrahydrocannabinol, delta-9-tetrahydrocannabinol or
8 dronabinol or similar substances shall not serve as a basis for
9 discharge from the program.

10 (ix) That the opioid treatment program must report and provide
11 statistics to the Department of Health and Human Resources
12 demonstrating compliance with the random drug test rules,
13 including:

14 (A) Confirmation that the random drug tests were truly random
15 in regard to both the patients tested and to the times random drug
16 tests were administered by lottery or some other objective standard
17 so as not to prejudice or protect any particular patient;

18 (B) Confirmation that the random drug tests were performed at
19 least monthly for all program participants;

20 (C) The total number and the number of positive results; and

21 (D) The number of expulsions from the program.

22 (x) That all opioid treatment facilities be open for business
23 seven days per week; however, the opioid treatment center may be
24 closed for eight holidays and two training days per year. During

1 all operating hours, every opioid treatment program shall have a
2 health care professional as defined by rule promulgated by the
3 secretary actively licensed in this state present and on duty at
4 the treatment center and a physician actively licensed in this
5 state available for consultation.

6 (xi) That the Office of Health Facility Licensure and
7 Certification develop policies and procedures in conjunction with
8 the Board of Pharmacy that will allow physicians treating patients
9 through an opioid treatment program access to the Controlled
10 Substances Monitoring Program database maintained by the Board of
11 Pharmacy at the patient's intake, before administration of
12 methadone or other treatment in an opioid treatment program, after
13 the initial thirty days of treatment, prior to any take-home
14 medication being granted, after any positive drug test, and at each
15 ninety-day treatment review to ensure the patient is not seeking
16 prescription medication from multiple sources. The results
17 obtained from the Controlled Substances Monitoring Program database
18 shall be maintained with the patient records.

19 (xii) That each opioid treatment program shall establish a
20 peer review committee, with at least one physician member, to
21 review whether the program is following guidelines established by
22 a nationally recognized authority approved by the secretary. The
23 secretary shall prescribe the procedure for evaluation by the peer
24 review. Each opioid treatment program shall submit a report of the

1 peer review results to the secretary on a quarterly basis.

2 (xiii) The secretary shall propose a rule for legislative
3 approval in accordance with ~~the provisions of~~ article three,
4 chapter twenty-nine-a of this code for the distribution of state
5 aid to local health departments and basic public health services
6 funds.

7 The rule shall include the following provisions:

8 Base allocation amount for each county;

9 Establishment and administration of an emergency fund of no
10 more than two percent of the total annual funds of which unused
11 amounts are to be distributed back to local boards of health at the
12 end of each fiscal year;

13 A calculation of funds utilized for state support of local
14 health departments;

15 Distribution of remaining funds on a per capita weighted
16 population approach which factors coefficients for poverty, health
17 status, population density and health department interventions for
18 each county and a coefficient which encourages counties to merge in
19 the provision of public health services;

20 A hold-harmless provision to provide that each local health
21 department receives no less in state support for a period of four
22 years beginning in the 2009 budget year.

23 The Legislature finds that an emergency exists and, therefore,
24 the secretary shall file an emergency rule to implement ~~the~~

1 ~~provisions of this section pursuant to the provisions of~~ section
2 fifteen, article three, chapter twenty-nine-a of this code. The
3 emergency rule is subject to the prior approval of the Legislative
4 Oversight Commission on Health and Human Resources Accountability
5 prior to filing with the Secretary of State.

6 (xiv) Other health-related matters which the department is
7 authorized to supervise and for which the rule-making authority has
8 not been otherwise assigned.

NOTE: The purpose of this bill is to require opioid treatment programs to report and provide statistics to the Legislative Oversight Commission on Health and Human Resources Accountability. The bill also deletes outdated language and makes stylistic changes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.