

1 **H. B. 2987**

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

5 [Introduced March 19, 2013; referred to the
6 Committee on Health and Human Resources then the
7 Judiciary.]

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9
10 A BILL to amend and reenact §16-1-4 of the Code of West Virginia,
11 1931, as amended, relating to methadone and treatment program
12 required reports.

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

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

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

17 **§16-1-4. Proposal of rules by the secretary.**

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

1 advise the secretary on rules.

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

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

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

18 (B) Propose or enforce rules applicable to single-family
19 dwelling units for single-family dwelling unit sanitary sewerage
20 disposal systems; or

21 (C) Restrict any subdivision or development which might
22 endanger the public health, the sanitary condition of streams or
23 sources of water supply;

24 (2) The sanitary condition of all institutions and schools,

1 whether public or private, public conveyances, dairies,
2 slaughterhouses, workshops, factories, labor camps, all other
3 places open to the general public and inviting public patronage or
4 public assembly, or tendering to the public any item for human
5 consumption and places where trades or industries are conducted;

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

14 (4) Safe drinking water, including:

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

24 (B) The minimum requirements for: Sampling and testing; system

1 operation; public notification by a public water system on being
2 granted a variance or exemption or upon failure to comply with
3 specific requirements of this section and rules promulgated under
4 this section; record keeping; laboratory certification; as well as
5 procedures and conditions for granting variances and exemptions to
6 public water systems from state public water systems rules; and

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

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

15 (6) The training and examination requirements for emergency
16 medical service attendants and emergency medical care technician-
17 paramedics; the designation of the health care facilities, health
18 care services and the industries and occupations in the state that
19 must have emergency medical service attendants and emergency
20 medical care technician-paramedics employed and the availability,
21 communications and equipment requirements with respect to emergency
22 medical service attendants and to emergency medical care
23 technician-paramedics. Any regulation of emergency medical service
24 attendants and emergency medical care technician-paramedics may not

1 exceed the provisions of article four-c of this chapter;

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

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

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

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

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

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

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

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

17 (E) All existing opioid treatment programs shall be subject to
18 monitoring by the secretary. All staff working or volunteering at
19 opioid treatment programs shall complete the minimum education,
20 reporting and safety training criteria established by the
21 secretary. All existing opioid treatment programs shall be in
22 compliance within one hundred eighty days of the effective date of
23 the revised emergency rules as required herein. The revised
24 emergency rules shall provide at a minimum:

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

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

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

21 (iv) That within thirty days after admission of a patient, the
22 opioid treatment program shall develop an individualized treatment
23 plan of care and attach the plan to the patient's chart no later
24 than five days after the plan is developed. The opioid treatment

1 program shall follow guidelines established by a nationally
2 recognized authority approved by the secretary and include a
3 recovery model in the individualized treatment plan of care. The
4 treatment plan is to reflect that detoxification is an option for
5 treatment and supported by the program; that under the
6 detoxification protocol the strength of maintenance doses of
7 methadone should decrease over time, the treatment should be
8 limited to a defined period of time, and participants are required
9 to work toward a drug-free lifestyle.

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

14 (I) The total number of patients;

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

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

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

22 (A) Termination or disqualification;

23 (B) Completion of a program of detoxification;

24 (C) Voluntary withdrawal prior to completion of all

1 requirements of detoxification as determined by the opioid
2 treatment program;

3 (D) Successful completion of the individualized treatment care
4 plan; or

5 (E) An unexplained reason.

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

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

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

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

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

24 (D) Cocaine;

1 (E) Methamphetamine or amphetamine;

2 (F) Tetrahydrocannabinol, delta-9-tetrahydrocannabinol or
3 dronabinol or other similar substances; or

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

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

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

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

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

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

23 (1) Provide mandatory and documented weekly counseling of no
24 less than thirty minutes, which shall include weekly meetings with

1 a counselor who is licensed, certified or enrolled in the process
2 of obtaining licensure or certification in compliance with the
3 rules and on staff at the opioid treatment program;

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

6 (3) Provide mandatory documented treatment team meetings with
7 the patient.

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

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

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

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

22 (D) Upon a fourth positive drug test within a six-month
23 period, the patient shall be immediately discharged from the opioid
24 treatment program or, at the option of the patient, shall

1 immediately be provided the opportunity to participate in a twenty-
2 one day detoxification plan, followed by immediate discharge from
3 the opioid treatment program: *Provided*, That testing positive
4 solely for tetrahydrocannabinol, delta-9-tetrahydrocannabinol or
5 dronabinol or similar substances shall not serve as a basis for
6 discharge from the program.

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

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

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

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

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

19 (x) That all opioid treatment facilities be open for business
20 seven days per week; however, the opioid treatment center may be
21 closed for eight holidays and two training days per year. During
22 all operating hours, every opioid treatment program shall have a
23 health care professional as defined by rule promulgated by the
24 secretary actively licensed in this state present and on duty at

1 the treatment center and a physician actively licensed in this
2 state available for consultation.

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

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

23 (xiii) The secretary shall propose a rule for legislative
24 approval in accordance with ~~the provisions of~~ article three,

1 chapter twenty-nine-a of this code for the distribution of state
2 aid to local health departments and basic public health services
3 funds.

4 The rule shall include the following provisions:

5 Base allocation amount for each county;

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

10 A calculation of funds utilized for state support of local
11 health departments;

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

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

20 The Legislature finds that an emergency exists and, therefore,
21 the secretary shall file an emergency rule to implement ~~the~~
22 ~~provisions of~~ this section pursuant to ~~the provisions of~~ section
23 fifteen, article three, chapter twenty-nine-a of this code. The
24 emergency rule is subject to the prior approval of the Legislative

1 Oversight Commission on Health and Human Resources Accountability
2 prior to filing with the Secretary of State.

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

NOTE: The purpose of this bill concerns methadone and to require opioid treatment programs to report and provide statistics to the Legislative Oversight Commission on Health and Human Resources Accountability.

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