

Senate Bill No. 51

(By Senator Walters)

[Introduced January 8, 2014; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

A BILL to amend and reenact §16-1-4 of the Code of West Virginia,
1931, as amended, relating to the state public health system;
proposal of rules by the secretary; and mandating requiring
the installation of water-free urinals in public rest areas,
institutions and schools.

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.

(a) The secretary may propose rules in accordance with the
provisions of article three, chapter twenty-nine-a of this code
that are necessary and proper to effectuate the purposes of this
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

1 (C) Restrict any subdivision or development which might
2 endanger the public health, the sanitary condition of streams or
3 sources of water supply;

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

10 (3) Occupational and industrial health hazards, the sanitary
11 conditions of streams, sources of water supply, sewerage facilities
12 and plumbing systems and the qualifications of personnel connected
13 with any of those facilities, without regard to whether the
14 supplies or systems are publicly or privately owned; and the design
15 of all water systems, plumbing systems, sewerage systems, sewage
16 treatment plants, excreta disposal methods and swimming pools in
17 this state, whether publicly or privately owned: Provided, That
18 the rules shall require that when urinals in all public rest areas,
19 institutions and schools need to be replaced, they shall be
20 replaced with water free urinals;

21 (4) Safe drinking water, including:

22 (A) The maximum contaminant levels to which all public water
23 systems must conform in order to prevent adverse effects on the

1 health of individuals and, if appropriate, treatment techniques
2 that reduce the contaminant or contaminants to a level which will
3 not adversely affect the health of the consumer. The rule shall
4 contain provisions to protect and prevent contamination of
5 wellheads and well fields used by public water supplies so that
6 contaminants do not reach a level that would adversely affect the
7 health of the consumer;

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

15 (C) The requirements covering the production and distribution
16 of bottled drinking water and may establish requirements governing
17 the taste, odor, appearance and other consumer acceptability
18 parameters of drinking water;

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

23 (6) The training and examination requirements for emergency

1 medical service attendants and emergency medical care technician-
2 paramedics; the designation of the health care facilities, health
3 care services and the industries and occupations in the state that
4 must have emergency medical service attendants and emergency
5 medical care technician-paramedics employed and the availability,
6 communications and equipment requirements with respect to emergency
7 medical service attendants and to emergency medical care
8 technician-paramedics. Any regulation of emergency medical service
9 attendants and emergency medical care technician-paramedics may not
10 exceed the provisions of article four-c of this chapter;

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

23 (8) Fees for services provided by the Bureau for Public Health

1 including, but not limited to, laboratory service fees,
2 environmental health service fees, health facility fees and permit
3 fees;

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

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

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

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

14 (C) There is a moratorium on the licensure of new opioid
15 treatment programs that do not have a certificate of need as of the
16 effective date of the 2007 amendments to this subsection, which
17 shall continue until the Legislature determines that there is a
18 necessity for additional opioid treatment facilities in West
19 Virginia.

20 (D) The secretary shall file revised emergency rules with the
21 Secretary of State to regulate opioid treatment programs in
22 compliance with the provisions of this section. Any opioid
23 treatment program facility that has received a certificate of need

1 pursuant to article two-d of this chapter by the Health Care
2 Authority shall be permitted to proceed to license and operate the
3 facility.

4 (E) All existing opioid treatment programs shall be subject to
5 monitoring by the secretary. All staff working or volunteering at
6 opioid treatment programs shall complete the minimum education,
7 reporting and safety training criteria established by the
8 secretary. All existing opioid treatment programs shall be in
9 compliance within one hundred eighty days of the effective date of
10 the revised emergency rules as required herein. The revised
11 emergency rules shall provide at a minimum:

12 (i) That the initial assessment prior to admission for entry
13 into the opioid treatment program shall include an initial drug
14 test to determine whether an individual is either opioid addicted
15 or presently receiving methadone for an opioid addiction from
16 another opioid treatment program.

17 (ii) The patient may be admitted to the opioid treatment
18 program if there is a positive test for either opioids or methadone
19 or there are objective symptoms of withdrawal, or both, and all
20 other criteria set forth in the rule for admission into an opioid
21 treatment program are met. Admission to the program may be allowed
22 to the following groups with a high risk of relapse without the
23 necessity of a positive test or the presence of objective symptoms:

1 Pregnant women with a history of opioid abuse, prisoners or
2 parolees recently released from correctional facilities, former
3 clinic patients who have successfully completed treatment but who
4 believe themselves to be at risk of imminent relapse and HIV
5 patients with a history of intravenous drug use.

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

9 (iv) That within thirty days after admission of a patient, the
10 opioid treatment program shall develop an individualized treatment
11 plan of care and attach the plan to the patient's chart no later
12 than five days after the plan is developed. The opioid treatment
13 program shall follow guidelines established by a nationally
14 recognized authority approved by the secretary and include a
15 recovery model in the individualized treatment plan of care. The
16 treatment plan is to reflect that detoxification is an option for
17 treatment and supported by the program; that under the
18 detoxification protocol the strength of maintenance doses of
19 methadone should decrease over time, the treatment should be
20 limited to a defined period of time, and participants are required
21 to work toward a drug-free lifestyle.

22 (v) That each opioid treatment program shall report and
23 provide statistics to the Department of Health and Human Resources

1 at least semiannually which includes the total number of patients;
2 the number of patients who have been continually receiving
3 methadone treatment in excess of two years, including the total
4 number of months of treatment for each such patient; the state
5 residency of each patient; the number of patients discharged from
6 the program, including the total months in the treatment program
7 prior to discharge and whether the discharge was for:

8 (A) Termination or disqualification;

9 (B) Completion of a program of detoxification;

10 (C) Voluntary withdrawal prior to completion of all
11 requirements of detoxification as determined by the opioid
12 treatment program;

13 (D) Successful completion of the individualized treatment care
14 plan; or

15 (E) An unexplained reason.

16 (vi) That random drug testing of all patients shall be
17 conducted during the course of treatment at least monthly. For
18 purposes of these rules, "random drug testing" means that each
19 patient of an opioid treatment program facility has a statistically
20 equal chance of being selected for testing at random and at
21 unscheduled times. Any refusal to participate in a random drug
22 test shall be considered a positive test. Nothing contained in
23 this section or the legislative rules promulgated in conformity

1 herewith will preclude any opioid treatment program from
2 administering such additional drug tests as determined necessary by
3 the opioid treatment program.

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

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

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

9 (C) Benzodiazepine including diazepam, lorazepam, clonazepam
10 and alprazolam;

11 (D) Cocaine;

12 (E) Methamphetamine or amphetamine;

13 (F) Tetrahydrocannabinol, delta-9-tetrahydrocannabinol or
14 dronabinol or other similar substances; or

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

17 (viii) That a positive drug test is a test that results in the
18 presence of any drug or substance listed in this schedule and any
19 other drug or substance prohibited by the opioid treatment program.

20 A positive drug test result after the first six months in an opioid
21 treatment program shall result in the following:

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

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

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

8 (B) Upon a second positive drug test result within six months
9 of a previous positive drug test result, the opioid treatment
10 program shall:

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

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

18 (3) Provide mandatory documented treatment team meetings with
19 the patient.

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

22 (1) Provide mandatory and documented weekly counseling of no
23 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 one hundred twenty days; and

6 (3) Provide mandatory and documented treatment team meetings
7 with the patient which will include, at a minimum: The need for
8 continuing treatment; a discussion of other treatment alternatives;
9 and the execution of a contract with the patient advising the
10 patient of discharge for continued positive drug tests.

11 (D) Upon a fourth positive drug test within a six-month
12 period, the patient shall be immediately discharged from the opioid
13 treatment program or, at the option of the patient, shall
14 immediately be provided the opportunity to participate in a twenty-
15 one day detoxification plan, followed by immediate discharge from
16 the opioid treatment program: *Provided*, That testing positive
17 solely for tetrahydrocannabinol, delta-9-tetrahydrocannabinol or
18 dronabinol or similar substances shall not serve as a basis for
19 discharge from the program.

20 (ix) That the opioid treatment program must report and provide
21 statistics to the Department of Health and Human Resources
22 demonstrating compliance with the random drug test rules,
23 including:

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

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

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

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

9 (x) That all opioid treatment facilities be open for business
10 seven days per week; however, the opioid treatment center may be
11 closed for eight holidays and two training days per year. During
12 all operating hours, every opioid treatment program shall have a
13 health care professional as defined by rule promulgated by the
14 secretary actively licensed in this state present and on duty at
15 the treatment center and a physician actively licensed in this
16 state available for consultation.

17 (xi) That the Office of Health Facility Licensure and
18 Certification develop policies and procedures in conjunction with
19 the Board of Pharmacy that will allow physicians treating patients
20 through an opioid treatment program access to the Controlled
21 Substances Monitoring Program database maintained by the Board of
22 Pharmacy at the patient's intake, before administration of
23 methadone or other treatment in an opioid treatment program, after

1 the initial thirty days of treatment, prior to any take-home
2 medication being granted, after any positive drug test, and at each
3 ninety-day treatment review to ensure the patient is not seeking
4 prescription medication from multiple sources. The results
5 obtained from the Controlled Substances Monitoring Program database
6 shall be maintained with the patient records.

7 (xii) That each opioid treatment program shall establish a
8 peer review committee, with at least one physician member, to
9 review whether the program is following guidelines established by
10 a nationally recognized authority approved by the secretary. The
11 secretary shall prescribe the procedure for evaluation by the peer
12 review. Each opioid treatment program shall submit a report of the
13 peer review results to the secretary on a quarterly basis.

14 (xiii) The secretary shall propose a rule for legislative
15 approval in accordance with the provisions of article three,
16 chapter twenty-nine-a of this code for the distribution of state
17 aid to local health departments and basic public health services
18 funds.

19 The rule shall include the following provisions:

20 Base allocation amount for each county;

21 Establishment and administration of an emergency fund of no
22 more than two percent of the total annual funds of which unused
23 amounts are to be distributed back to local boards of health at the

1 end of each fiscal year;

2 A calculation of funds utilized for state support of local
3 health departments;

4 Distribution of remaining funds on a per capita weighted
5 population approach which factors coefficients for poverty, health
6 status, population density and health department interventions for
7 each county and a coefficient which encourages counties to merge in
8 the provision of public health services;

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

12 The Legislature finds that an emergency exists and, therefore,
13 the secretary shall file an emergency rule to implement the
14 provisions of this section pursuant to the provisions of section
15 fifteen, article three, chapter twenty-nine-a of this code. The
16 emergency rule is subject to the prior approval of the Legislative
17 Oversight Commission on Health and Human Resources Accountability
18 prior to filing with the Secretary of State.

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

NOTE: The purpose of this bill is to require the installation of water free urinals in public rest areas, institutions and schools.

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