

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2007**

BY JENNINGS, HARSHBARGER, HANNA, HOUSEHOLDER,  
WILSON, FOSTER, ELLINGTON, MCGEEHAN, KESSINGER,  
HOLLEN AND MALCOLM

[Introduced January 15, 2019; Referred  
to the Committee on Health and Human Resources then  
the Judiciary.]

1 A BILL to repeal §9-5-19 of the Code of West Virginia, 1931, as amended; to repeal §16-2D-2,  
 2 §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-6, §16-2D-7, §16-2D-8, §16-2D-9, §16-2D-10,  
 3 §16-2D-11, §16-2D-12, §16-2D-13, §16-2D-14, §16-2D-15, §16-2D-16, §16-2D-17, §16-  
 4 2D-18, §16-2D-19 and §16-2D-20 of said code; to repeal §16-2N-3 of said code; to repeal  
 5 §16-29A-20 of said code; to repeal §16-29B-1, §16-29B-8, §16-29B-12, §16-29B-13, §16-  
 6 29B-14, §16-29B-15 and §16-29B-30 of said code; to repeal §49-2-124 of said code; to  
 7 amend and reenact §16-2D-1 of said code; to amend and reenact §16-5Y-3 and §16-5Y-  
 8 12 of said code; to amend and reenact §16-29B-8 of said code; and to amend and reenact  
 9 §33-15B-5 of said code, all relating to eliminating the certificate of need program; fixing an  
 10 effective date; deleting references to the certificate of need program throughout the code  
 11 and making technical corrections.

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

**CHAPTER 9. HUMAN SERVICES.**

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§9-5-19. Summary review for certain behavioral health facilities and services.**

1 [Repealed]

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 2D. CERTIFICATE OF NEED.**

**§16-2D-1. Legislative findings.**

1 It is declared to be the public policy of this state:

2 ~~(1) That the offering or development of all health services shall be accomplished in a~~  
 3 ~~manner which is orderly, economical and consistent with the effective development of necessary~~  
 4 ~~and adequate means of providing for the health services of the people of this state and to avoid~~  
 5 ~~unnecessary duplication of health services, and to contain or reduce increases in the cost of~~  
 6 ~~delivering health services.~~

7           ~~(2) That the general welfare and protection of the lives, health and property of the people~~  
8 ~~of this state require that the type, level and quality of care, the feasibility of providing such care~~  
9 ~~and other criteria as provided for in this article, including certificate of need standards and criteria~~  
10 ~~developed by the authority pursuant to provisions of this article, pertaining to health services~~  
11 ~~within this state, be subject to review and evaluation before any health services are offered or~~  
12 ~~developed in order that appropriate and needed health services are made available for persons~~  
13 ~~in the area to be served~~

14           (a) Notwithstanding any other provision of this code to the contrary, the certificate of need  
15 program previously authorized by this article is terminated as of July 1, 2019. Any reference  
16 elsewhere in this code to a certificate of need as required by this article shall cease to be  
17 enforceable as of that time. A health care facility may not be required to obtain a certificate of  
18 need or similar authorization after that date before operating in this state.

19           (b) For the purposes of this section, "health care facility" means a publicly or privately  
20 owned facility, agency or entity that offers or provides health services, whether a for-profit or  
21 nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part.

**§16-2D-2. Definitions.**

1           [Repealed]

**§16-2D-3. Powers and duties of the authority.**

1           [Repealed]

**§16-2D-4. Rulemaking.**

1           [Repealed]

**§16-2D-5. Fee; special revenue account; administrative fines.**

1           [Repealed]

**§16-2D-6. Changes to certificate of need standards.**

1           [Repealed]

**§16-2D-7. Determination of reviewability.**

1 [Repealed]

**§16-2D-8. Proposed health services that require a certificate of need.**

1 [Repealed]

**§16-2D-9. Health services that cannot be developed.**

1 [Repealed]

**§16-2D-10. Exemptions from certificate of need.**

1 [Repealed]

**§16-2D-11. Exemptions from certificate of need which require approval from the authority.**

1 [Repealed]

**§16-2D-12. Minimum criteria for certificate of need reviews.**

1 [Repealed]

**§16-2D-13. Procedures for certificate of need reviews.**

1 [Repealed]

**§16-2D-14. Procedure for an uncontested application for a certificate of need.**

1 [Repealed]

**§16-2D-15. Authority to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.**

1 [Repealed]

**§16-2D-16. Appeal of certificate of need a decision.**

1 [Repealed]

**§16-2D-17. Nontransference, time period compliance and withdrawal of certificate of need.**

1 [Repealed]

**§16-2D-18. Denial or revocation of license for operating without certificate.**

1 [Repealed]

**§16-2D-19. Injunctive relief; civil penalty.**

1 [Repealed]

**§16-2D-20. Statute of limitations.**

1 [Repealed]

**ARTICLE 2N. NEONATAL ABSTINENCE CENTERS.**

**§16-2N-3. Certificate of need; exemption from moratorium.**

1 [Repealed]

**ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.**

**§16-29A-20. Certificate of need.**

1 [Repealed]

**ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.**

**§16-5Y-3. Opioid treatment programs to obtain license; application; fees and inspections.**

1 (a) No person, partnership, association or corporation may operate an opioid treatment  
2 program without first obtaining a license from the secretary in accordance with the provisions of  
3 this article and the rules lawfully promulgated pursuant to this article.

4 (b) Any person, partnership, association or corporation desiring a license to operate an  
5 opioid treatment program in this state shall file with the Office of Health Facility Licensure and  
6 Certification an application in such form and with such information as the secretary shall prescribe  
7 and furnish accompanied by an application fee.

8 (c) The Director of the Office of Health Facility Licensure and Certification or his or her  
9 designee shall inspect each facility and review all documentation submitted with the application.  
10 The director shall then provide a recommendation to the secretary whether to approve or deny  
11 the application for a license. The secretary shall issue a license if the facility is in compliance with  
12 the provisions of this article and with the rules lawfully promulgated pursuant to this article.

13 (d) A license shall be issued in one of three categories:

14 (1) An initial 12-month license shall be issued to an opioid treatment program establishing  
15 a new program or service for which there is insufficient consumer participation to demonstrate

16 substantial compliance with this article and with all rules promulgated pursuant to this article;

17 (2) A provisional license shall be issued when an opioid treatment program seeks a  
18 renewal license, or is an existing program as of the effective date of this article and is seeking an  
19 initial license, and the opioid treatment program is not in substantial compliance with this article  
20 and with all rules promulgated pursuant to this article, but does not pose a significant risk to the  
21 rights, health and safety of a consumer. It shall expire not more than six months from the date of  
22 issuance, and may not be consecutively reissued; or

23 (3) A renewal license shall be issued when an opioid treatment program is in substantial  
24 compliance with this article and with all rules promulgated pursuant to this article. A renewal  
25 license shall expire not more than one year from the date of issuance.

26 (e) At least 60 days prior to the license expiration date, an application for renewal shall be  
27 submitted by the opioid treatment program to the secretary on forms furnished by the secretary.  
28 A license shall be renewed if the secretary determines that the applicant is in compliance with this  
29 article and with all rules promulgated pursuant to this article. A license issued to one program  
30 location pursuant to this article is not transferrable or assignable. Any change of ownership of a  
31 licensed medication-assisted treatment program requires submission of a new application. The  
32 medication-assisted treatment program shall notify the secretary of any change in ownership  
33 within 10 days of the change and must submit a new application within the time frame prescribed  
34 by the secretary.

35 (f) Any person, partnership, association or corporation that seeks to obtain or renew a  
36 license for an opioid treatment program in this state must submit to the secretary the following  
37 documentation:

38 (1) Full operating name of the program as advertised;

39 (2) Legal name of the program as registered with the West Virginia Secretary of State;

40 (3) Physical address of the program;

41 (4) Preferred mailing address for the program;

- 42 (5) Email address to be used as the primary contact for the program;
- 43 (6) Federal Employer Identification Number assigned to the program;
- 44 (7) All business licenses issued to the program by this state, the State Tax Department,  
45 the Secretary of State and all other applicable business entities;
- 46 (8) Brief description of all services provided by the program;
- 47 (9) Hours of operation;
- 48 (10) Legal Registered Owner Name – name of the person registered as the legal owner  
49 of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal  
50 owner separately, indicating the percentage of ownership;
- 51 (11) Medical director's full name, medical license number, Drug Enforcement  
52 Administration registration number, and a list of all current certifications;
- 53 (12) For each employee of the program, provide the following:
- 54 (A) Employee's role and occupation within the program;
- 55 (B) Full legal name;
- 56 (C) Medical license, if applicable;
- 57 (D) Drug Enforcement Administration registration number, if applicable;
- 58 (E) Drug Enforcement Administration identification number to prescribe buprenorphine for  
59 addiction, if applicable; and
- 60 (F) Number of hours per week worked at program;
- 61 (13) Name and location address of all programs owned or operated by the applicant;
- 62 (14) Notarized signature of applicant;
- 63 (15) Check or money order for licensing fee and inspection fee;
- 64 (16) Verification of education and training for all physicians, counselors and social workers  
65 practicing at or used by referral by the program such as fellowships, additional education,  
66 accreditations, board certifications and other certifications; and
- 67 (17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber

68 practicing at the program for the three months preceding the date of application. ~~and~~  
69 ~~(18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the~~  
70 ~~West Virginia Health Care Authority~~

71 (g) Upon satisfaction that an applicant has met all of the requirements of this article, the  
72 secretary shall issue a license to operate an opioid treatment program. An entity that obtains this  
73 license may possess, have custody or control of, and dispense drugs indicated and approved by  
74 the United States Food and Drug Administration for the treatment of substance use disorders.

75 (h) The opioid treatment program shall display the current license in a prominent location  
76 where services are provided and in clear view of all patients.

77 (i) The secretary or his or her designee shall inspect on a periodic basis all opioid  
78 treatment programs that are subject to this article and all rules adopted pursuant to this article to  
79 ensure continued compliance.

80 (j) Any license in effect at the time of the passage of this section in the 2016 regular session  
81 of the Legislature shall remain in effect until such time as new legislative rules promulgated  
82 pursuant to this article become effective. Upon the effective date of the new rules any licensee  
83 shall file for a new license within six months pursuant to the licensing procedures and  
84 requirements of this section and the new rules promulgated hereunder. The existing license shall  
85 remain effective until receipt of the new license.

**§16-5Y-12. Moratorium; certificate of need.**

1 There is a moratorium on the licensure of new opioid treatment programs ~~which do not~~  
2 ~~have a certificate of need~~ as of the effective date of the enactment of this section during the  
3 2016 regular session of the Legislature which shall continue until the Legislature determines  
4 that there is a necessity for additional opioid treatment programs in West Virginia.

**ARTICLE 29B. HEALTH CARE AUTHORITY.**

**§16-29B-1. Legislative findings; purpose.**

1 [Repealed]



**§16-29B-8. Powers generally; budget expenses of the authority.**

1 [Repealed]

**§16-29B-12. Certificate of need hearings; administrative procedures act applicable; hearings examiner; subpoenas.**

1 [Repealed]

**§16-29B-13. Review of final orders of board.**

1 [Repealed]

**§16-29B-14. Injunction; mandamus.**

1 [Repealed]

**§16-29B-15. Refusal to comply.**

1 [Repealed]

**§16-29B-30. Applicability; transition plan.**

1 [Repealed]

**CHAPTER 33. INSURANCE.**

**ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.**

**§33-15B-5. Penalties for violation.**

1 Any person, partnership, corporation, limited liability company, professional corporation,  
2 health care provider, insurer or other payer, or other entity violating any provision of this article  
3 shall be subject to a fine imposed by the commissioner of not more than \$1000 for each violation.  
4 ~~and, in addition to or in lieu of any fine imposed, the West Virginia health care authority is~~  
5 ~~empowered to withhold rate approval or a certificate of need for any health care provider violating~~  
6 ~~any provision of this article~~

**CHAPTER 49. CHILD WELFARE.**

**ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

**§49-2-124. Certificate of need not required; conditions; review.**

1

[Repealed]

NOTE: The purpose of this bill is to eliminate the certificate of need program.

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