

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 265**

5 (SENATOR SNYDER, *original sponsor*)

6 _____
7 [Passed April 13, 2013; in effect ninety days from passage.]
8 _____
9

10 AN ACT to amend and reenact article 5, chapter 64 of the Code of
11 West Virginia, 1931, as amended, relating generally to the
12 promulgation of administrative rules by the Department of
13 Health and Human Resources; legislative mandate or
14 authorization for the promulgation of certain legislative
15 rules by various executive or administrative agencies of the
16 state; authorizing certain of the agencies to promulgate
17 certain legislative rules with various modifications presented
18 to and recommended by the Legislative Rule-Making Review
19 Committee; authorizing certain of the agencies to promulgate
20 certain legislative rules with various modifications presented
21 to and recommended by the Legislative Rule-Making Review
22 Committee and as amended by the Legislature; authorizing
23 certain of the agencies to promulgate certain legislative
24 rules in the form that the rules were filed in the State

1 Register; authorizing certain of the agencies to promulgate
2 certain legislative rules in the form that the rules were
3 filed in the State Register and as amended by the Legislature;
4 authorizing the Department of Health and Human Resources to
5 promulgate a legislative rule relating to reportable diseases,
6 events and conditions; authorizing the Department of Health
7 and Human Resources to promulgate a legislative rule relating
8 to general sanitation; authorizing the Department of Health
9 and Human Resources to promulgate a legislative rule relating
10 to Grade A pasturized milk; authorizing the Department of
11 Health and Human Resources to promulgate a legislative rule
12 relating to fees for services; repealing the Bureau for Public
13 Health's legislative rule relating to the regulation of opioid
14 treatment programs, 64 CSR 90; authorizing the Department of
15 Health and Human Resources to promulgate a legislative rule
16 relating to pulse oximetry newborn testing; authorizing the
17 Department of Health and Human Resources to promulgate a
18 legislative rule relating to the regulation of opioid
19 treatment programs, 69 CSR 7; authorizing the Department of
20 Health and Human Resources to promulgate a legislative rule
21 relating to chronic pain management clinic licensure;
22 authorizing the Department of Health and Human Resources to
23 promulgate a legislative rule relating to minimum licensing
24 requirements for residential child care and treatment

1 facilities for children and transitioning adults in West
2 Virginia; authorizing the Health Care Authority to promulgate
3 a legislative rule relating to the West Virginia Health
4 Information Network; and authorizing the Bureau of Senior
5 Services to promulgate a legislative rule relating to the in-
6 home care worker registry.

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

8 That article 5, chapter 64 of the Code of West Virginia, 1931,
9 as amended, be amended and reenacted to read as follows:

10 **ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN**
11 **RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

12 **§64-5-1. Bureau for Public Health.**

13 (a) The legislative rule filed in the State Register on August
14 31, 2012, authorized under the authority of section four, article
15 one, chapter sixteen of this code, modified by the Department of
16 Health and Human Resources to meet the objections of the
17 Legislative Rule-Making Review Committee and refiled in the State
18 Register on January 10, 2013, relating to the Department of Health
19 and Human Resources (reportable diseases, events and conditions, 64
20 CSR 7), is authorized with the following amendments:

21 On page twenty-four, subsection 9.1., by striking out the
22 words "the reporting" and inserting in lieu thereof the words "the
23 access";

24 On page twenty-five, subsection 9.2., by striking out the

1 words "be reported" and inserting in lieu thereof the words "be
2 made available";

3 On page twenty-five, subsection 9.2., by striking out the
4 words "the reporting" and inserting in lieu thereof the words "the
5 access";

6 On page twenty-five, subsection 9.2., after the word
7 "activities" by inserting the following: "consistent with the
8 mission of the bureau. The responsibility for communication with
9 healthcare facilities regarding data collection, data quality and
10 completeness rests with the Office of Epidemiology and Prevention
11 Services within the Bureau for Public Health";

12 And,

13 On page twenty-five, by striking out all of subsection 9.3.
14 and renumbering the remaining subsection.

15 (b) The legislative rule filed in the State Register on June
16 29, 2012, authorized under the authority of section four, article
17 one, chapter sixteen of this code, modified by the Department of
18 Health and Human Resources to meet the objections of the
19 Legislative Rule-Making Review Committee and refiled in the State
20 Register on November 15, 2012, relating to the Department of Health
21 and Human Resources (general sanitation, 64 CSR 18), is authorized
22 with the following amendment:

23 On page three, subdivision 2.13, by removing the period and
24 inserting the following, "Bed and Breakfast Inn."

1 (c) The legislative rule filed in the State Register on August
2 27, 2012, authorized under the authority of section five, article
3 seven, chapter sixteen of this code, relating to the Department of
4 Health and Human Resources (Grade A pasturized milk, 64 CSR 34), is
5 authorized.

6 (d) The legislative rule filed in the State Register on August
7 31, 2012, authorized under the authority of section one, article
8 eleven, chapter sixteen of this code, modified by the Department of
9 Health and Human Resources to meet the objections of the
10 Legislative Rule-Making Review committee and refiled in the State
11 Register on January 10, 2013, relating to the Department of Health
12 and Human Resources (fees for services, 64 CSR 51), is authorized
13 with the following amendment:

14 On page eleven, subdivision 9.7, after the word "emergency",
15 by inserting a period and removing the underscored words "or as a
16 relevant factor associated with the provision of services and may
17 include but is not limited to, supply shortages, federal or other
18 funding restrictions of policy changes impacting the ability to
19 provide services".

20 (e) The legislative rule filed in the State Register on
21 October 11, 2012, authorized under the authority of section four,
22 article one, chapter sixteen of this code, relating to the
23 Department of Health and Human Resources (regulation of opioid
24 treatment programs, 64 CSR 90), is repealed.

1 (f) The legislative rule filed in the State Register on August
2 27, 2012, authorized under the authority of section four, article
3 one, chapter sixteen of this code, modified by the Department of
4 Health and Human Resources to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the State
6 Register on January 10, 2013, relating to the Department of Health
7 and Human Resources (pulse oximetry newborn testing, 64 CSR 100),
8 is authorized with the following amendment:

9 On page two, subdivision 5.3, by striking out the words "the
10 closest" and inserting in lieu thereof the word "an".

11 **§64-5-2. Department of Health and Human Resources.**

12 (a) The legislative rule filed in the State Register on August
13 31, 2012, authorized under the authority of section one, article
14 eleven, chapter sixteen of this code, modified by the Department of
15 Health and Human Resources to meet the objections of the
16 Legislative Rule-Making Review Committee and refiled in the State
17 Register on February 5, 2013, relating to the Department of Health
18 and Human Resources (regulation of opioid treatment programs, 69
19 CSR 7), is authorized with the following amendment:

20 On page fourteen, by striking section 7.3 and inserting a new
21 section 7.3 to read as follows:

22 "7.3. License Fees and Inspection Costs.

23 7.3.a. All applications for an initial or renewed license
24 shall be accompanied by a non-refundable license fee in the amount

1 required by this rule. The annual renewal fee is based upon the
2 average daily total census of the program. In addition to the set
3 fee, the annual renewal fee shall be adjusted on the first day of
4 June of each year to correspond with increases in the consumer
5 price index. The base amounts for initial and renewal fees are as
6 follows:

7 7.3.a.1. Initial license fee - \$250;

8 7.3.a.2. Renewal fee - fewer than 500 patients - \$500
9 plus adjustment;

10 7.3.a.3. Renewal fee - 500 to 1,000 patients - \$1,000
11 plus adjustment;

12 7.3.a.4. Renewal fee - more than 1,000 patients - \$1,500
13 plus adjustment.

14 7.3.b. An opioid treatment program shall pay for the cost of
15 the initial inspection made by the secretary prior to issuing a
16 license. The cost of the initial inspection is \$400, and shall be
17 billed to the applicant by the secretary within five business days
18 after the inspection. The cost of the initial inspection must be
19 paid in full by the applicant before a license may be issued.

20 7.3c. The Office of Health Facility Licensure and
21 Certification shall use the fee for increased oversight on opioid
22 treatment programs.”;

23 On page thirty-two, by inserting a new subdivision 18.3.j. to
24 read as follows:

1 "18.3.j. There shall be one (1) counselor for every fifty (50)
2 clients in the program.";

3 On page fifty-three, by striking section 30.8 and inserting a
4 new section 30.8 to read as follows:

5 "30.8. Each opioid treatment program must provide counseling
6 on preventing exposure to, and the transmission of, human
7 immunodeficiency virus (HIV) disease and Hepatitis C disease for
8 each patient admitted or re-admitted to maintenance or
9 detoxification treatment. Services rendered to patients with HIV
10 disease shall comply with the requirements of section 44 of this
11 rule.";

12 On page fifty-four, by striking subdivision 31.4.a and
13 inserting a new subdivision 31.4.a to read as follows:

14 "31.4.a. Preventing exposure to, and the transmission of, HIV
15 disease and Hepatitis C disease for each patient admitted or
16 readmitted to maintenance or detoxification treatment; and";

17 On page fifty-six, by striking subdivision 32.2.a and
18 inserting a new subdivision 32.2.a to read as follows:

19 "32.2.a. The initial post-admission assessment shall consist
20 of a comprehensive medical evaluation, which shall include, but not
21 be limited to:

22 32.2.a.1. A comprehensive physical evaluation;

23 32.2.a.2. A comprehensive psychiatric evaluation,
24 including mental status examination and psychiatric history;

- 1 32.2.a.3. A personal and family medical history;
- 2 32.2.a.4. A comprehensive history of substance abuse,
3 both personal and family;
- 4 32.2.a.5. A tuberculosis skin test and chest X-ray, if
5 skin test is positive;
- 6 32.2.a.6. A screening test for syphilis;
- 7 32.2.a.7. A Hepatitis C test;
- 8 32.2.a.8. An HIV test to the extent voluntarily elected
9 by the patient; and
- 10 32.2.a.9. Other tests as necessary or appropriate (e.g.,
11 CBC, EKG, chest X-ray, pap smear, hepatitis B surface antigen and
12 hepatitis B antibody testing).”;

13 On page seventy, by striking section 37.14 and inserting a new
14 section 37.14 to read as follows:

15 “37.14 The state authority may approve exceptional
16 unsupervised-medication dosages, including alternative medications,
17 on a case-by-case basis upon application for an exemption by the
18 program physician. Any authorization for exceptions shall be
19 consistent with guidelines and protocols of approved authorities,
20 provided that the authority may not grant any exceptions during a
21 calendar month which exceed three (3) exceptions or ten (10)
22 percent of the number of patients enrolled in the program on the
23 last day of the previous month, whichever is greater: *Provided,*

1 That the state authority may grant additional exceptions for
2 inclement weather or clinic closure.”;

3 On page seventy-three, by inserting a new subdivision 38.14 to
4 read as follows:

5 “38.14 Maintenance treatment shall be discontinued within two
6 (2) continuous years after the treatment is begun unless, based
7 upon the clinical judgment of the medical director or program
8 physician and staff which shall be recorded in the client's record
9 by the medical director or program physician, the client's status
10 indicates that the treatment should be continued for a longer
11 period of time because discontinuance from treatment would lead to
12 a return to (i) illicit opiate abuse or dependance, or (ii)
13 increased psychiatric, behavioral or medical symptomology.”;

14 On page seventy-five, by striking subdivision 41.2.d.3 and
15 inserting a new subdivision 41.2.d.3 to read as follows:

16 “41.2.d.3. When using urine as a screening mechanism, all
17 patient drug testing shall be observed to minimize the chance of
18 adulterating or substituting another individual's urine.”;

19 And,

20 On page eighty-one, by striking subdivision 44.5.d.1. and
21 inserting a new subdivision 44.5.d.1. to read as follows:

22 “44.5.d.1. Maintenance treatment dosage levels of pregnant
23 clients shall be maintained at the lowest possible dosage level
24 that is a medically appropriate therapeutic dose as determined by

1 the medical director or clinic physician taking the pregnancy into
2 account."

3 (b) The legislative rule filed in the State Register on
4 January 7, 2013, authorized under the authority of section nine,
5 article five-h, chapter sixteen of this code, relating to the
6 Department of Health and Human Resources (chronic pain management
7 clinic licensure, 69 CSR 8), is authorized with the following
8 amendments:

9 On page one, subsection 1.4, line eleven, following the number
10 "2013.", by inserting the following words:

11 "This rule is effective upon the date specified in an
12 emergency rule promulgated by the Department of Health and Human
13 Resources as being the date funding for implementation of Chronic
14 Pain Management Clinic Licensure will become available pursuant to
15 a duly enacted appropriation bill authorizing the expenditure of
16 funds for that purpose.";

17 On page four, subsection 3.1., by striking out all of
18 subdivisions 3.1.a., 3.1.b., 3.1.c. and 3.1.d. and inserting in
19 lieu thereof the following:

20 3.1.a. The primary component of the medical practice of the
21 clinic, facility or office is treatment of chronic pain for non-
22 malignant conditions;

23 3.1.b. More than fifty percent of patients in any one month of
24 the prescribers are provided treatment for chronic pain for

1 nonmalignant conditions and are prescribed, administered or
2 dispensed tramadol, carisoprodol, opioid drug products or other
3 Schedule II or Schedule III controlled substances for such
4 diagnosis;

5 3.1.c. The calculation of more than fifty percent of patients
6 will be calculated by dividing the number of unique patient
7 encounters at the clinic, facility or office during any one month
8 for a diagnosis of chronic nonmalignant pain and pursuant to such
9 diagnosis of chronic nonmalignant pain were prescribed,
10 administered or dispensed tramadol, carisoprodol, opioid drugs or
11 other Scheduled II or Scheduled III controlled substances by the
12 total number of all patient encounters at the clinic, facility or
13 office during any month; and

14 3.1.d. Patients receiving tramadol, carisoprodol, opioid drug
15 products or other Schedule II or Schedule III controlled substances
16 for treatment of an injury or illness that lasts or is expected to
17 last thirty days or less shall not be included in the calculation
18 of more than fifty percent of all patients." and renumbering the
19 remaining subdivisions;

20 On page five, by inserting a new paragraph, 3.2.i.2., to read
21 as follows:

22 "3.2.i.2. Medical practices, clinics or offices in which a
23 physician treats an average of 20 or fewer patients a day with any

1 diagnosis in any one month, and in which the physician holds a
2 Competency Certification in Controlled Substances Management.”;

3 And,

4 On page thirteen, subparagraph 6.5.b.2.B., after the words
5 “Osteopathic Specialist;” by inserting the words “hold Competency
6 Certification in Controlled Substances Management;”.

7 (c) The legislative rule filed in the State Register on August
8 30, 2012, authorized under the authority of section four, article
9 two-b, chapter forty-nine of this code, modified by the Department
10 of Health and Human Resources to meet the objections of the
11 Legislative Rule-Making Review Committee and refiled in the State
12 Register on January 15, 2013, relating to the Department of Health
13 and Human Resources (minimum licensing requirements for residential
14 child care and treatment facilities for children and transitioning
15 adults in West Virginia, 78 CSR 3), is authorized, with the
16 following amendment:

17 On page fifty-two, paragraph 11.2.a.3., line five, by striking
18 out the word “Training” and inserting the word “Certification”.

19 **§64-5-3. Health Care Authority.**

20 The legislative rule filed in the State Register on May 14,
21 2012, authorized under the authority of section seven, article
22 twenty-nine-g, chapter sixteen of this code, modified by the Health
23 Care Authority to meet the objections of the Legislative Rule-
24 Making Review Committee and refiled in the State Register on July

1 19, 2012, relating to the Health Care Authority to promulgate a
2 legislative rule relating to (West Virginia Health Information
3 Network, 65 CSR 28), is authorized.

4 **§64-5-4. Bureau of Senior Services.**

5 The legislative rule filed in the State Register on August 31,
6 2012, authorized under the authority of section fifteen, article
7 five-p, chapter sixteen of this code, modified by the Bureau of
8 Senior Services to meet the objections of the Legislative Rule-
9 making Review Committee and refiled in the State Register on
10 January 17, 2013, relating to the Bureau of Senior Services (in-
11 home care worker registry, 76 CSR 2), is authorized with the
12 following amendment:

13 On page two, subdivision 4.1(i), by striking the word
14 "training" and inserting the word "certification".