

H. B. 3075

(BY DELEGATES PERDUE, HATFIELD, BORDER,
REYNOLDS AND MORGAN)

[Introduced February 9, 2011; referred to the
Committee on Health and Human Resources then Finance.]

A BILL to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating to increasing the time period in the hold-harmless provision, when distributing state aid to local health departments and basic public health services funds, from three years to four years.

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.

1 The secretary may propose rules in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code
3 that are necessary and proper to effectuate the purposes of
4 this chapter. The secretary may appoint or designate
5 advisory councils of professionals in the areas of hospitals,
6 nursing homes, barbers and beauticians, postmortem
7 examinations, mental health and intellectual disability centers
8 and any other areas necessary to advise the secretary on
9 rules.

10 The rules may include, but are not limited to, the
11 regulation of:

12 (a) Land usage endangering the public health: *Provided,*
13 That no rules may be promulgated or enforced restricting the
14 subdivision or development of any parcel of land within
15 which the individual tracts, lots or parcels exceed two acres
16 each in total surface area and which individual tracts, lots or
17 parcels have an average frontage of not less than one hundred
18 fifty feet even though the total surface area of the tract, lot or

19 parcel equals or exceeds two acres in total surface area, and
20 which tracts are sold, leased or utilized only as single-family
21 dwelling units. Notwithstanding the provisions of this
22 subsection, nothing in this section may be construed to abate
23 the authority of the department to: (1) Restrict the
24 subdivision or development of a tract for any more intense or
25 higher density occupancy than a single-family dwelling unit;
26 (2) propose or enforce rules applicable to single-family
27 dwelling units for single-family dwelling unit sanitary
28 sewerage disposal systems; or (3) restrict any subdivision or
29 development which might endanger the public health, the
30 sanitary condition of streams or sources of water supply;

31 (b) The sanitary condition of all institutions and schools,
32 whether public or private, public conveyances, dairies,
33 slaughterhouses, workshops, factories, labor camps, all other
34 places open to the general public and inviting public
35 patronage or public assembly, or tendering to the public any
36 item for human consumption and places where trades or
37 industries are conducted;

38 (c) Occupational and industrial health hazards, the
39 sanitary conditions of streams, sources of water supply,
40 sewerage facilities and plumbing systems and the
41 qualifications of personnel connected with any of those
42 facilities, without regard to whether the supplies or systems
43 are publicly or privately owned; and the design of all water
44 systems, plumbing systems, sewerage systems, sewage
45 treatment plants, excreta disposal methods and swimming
46 pools in this state, whether publicly or privately owned;

47 (d) Safe drinking water, including:

48 (1) The maximum contaminant levels to which all public
49 water systems must conform in order to prevent adverse effects
50 on the health of individuals and, if appropriate, treatment
51 techniques that reduce the contaminant or contaminants to a
52 level which will not adversely affect the health of the consumer.
53 The rule shall contain provisions to protect and prevent
54 contamination of wellheads and well fields used by public water
55 supplies so that contaminants do not reach a level that would
56 adversely affect the health of the consumer;

57 (2) The minimum requirements for: Sampling and
58 testing; system operation; public notification by a public
59 water system on being granted a variance or exemption or
60 upon failure to comply with specific requirements of this
61 section and rules promulgated under this section; record
62 keeping; laboratory certification; as well as procedures and
63 conditions for granting variances and exemptions to public
64 water systems from state public water systems rules; and

65 (3) The requirements covering the production and
66 distribution of bottled drinking water and may establish
67 requirements governing the taste, odor, appearance and other
68 consumer acceptability parameters of drinking water;

69 (e) Food and drug standards, including cleanliness,
70 proscription of additives, proscription of sale and other
71 requirements in accordance with article seven of this chapter
72 as are necessary to protect the health of the citizens of this
73 state;

74 (f) The training and examination requirements for
75 emergency medical service attendants and emergency

76 medical care technician-paramedics; the designation of the
77 health care facilities, health care services and the industries
78 and occupations in the state that must have emergency
79 medical service attendants and emergency medical care
80 technician-paramedics employed and the availability,
81 communications and equipment requirements with respect to
82 emergency medical service attendants and to emergency
83 medical care technician-paramedics: *Provided*, That any
84 regulation of emergency medical service attendants and
85 emergency medical care technician-paramedics may not
86 exceed the provisions of article four-c of this chapter;

87 (g) The health and sanitary conditions of establishments
88 commonly referred to as bed and breakfast inns. For
89 purposes of this article, “bed and breakfast inn” means an
90 establishment providing sleeping accommodations and, at a
91 minimum, a breakfast for a fee: *Provided*, That the secretary
92 may not require an owner of a bed and breakfast providing
93 sleeping accommodations of six or fewer rooms to install a
94 restaurant-style or commercial food service facility:

95 *Provided, however,* That the secretary may not require an
96 owner of a bed and breakfast providing sleeping
97 accommodations of more than six rooms to install a
98 restaurant-type or commercial food service facility if the
99 entire bed and breakfast inn or those rooms numbering above
100 six are used on an aggregate of two weeks or less per year;

101 (h) Fees for services provided by the Bureau for Public
102 Health including, but not limited to, laboratory service fees,
103 environmental health service fees, health facility fees and
104 permit fees;

105 (i) The collection of data on health status, the health
106 system and the costs of health care;

107 (j) Opioid treatment programs duly licensed and
108 operating under the requirements of chapter twenty-seven of
109 this code. The Health Care Authority shall develop new
110 certificate of need standards, pursuant to the provisions of
111 article two-d of this chapter, that are specific for opioid
112 treatment program facilities. No applications for a certificate
113 of need for opioid treatment programs shall be approved by

114 the Health Care Authority as of the effective date of the 2007
115 amendments to this subsection. The secretary shall
116 promulgate revised emergency rules to govern licensed
117 programs: *Provided*, That there is a moratorium on the
118 licensure of new opioid treatment programs that do not have
119 a certificate of need as of the effective date of the 2007
120 amendments to this subsection, which shall continue until the
121 Legislature determines that there is a necessity for additional
122 opioid treatment facilities in West Virginia. The secretary
123 shall file revised emergency rules with the Secretary of State
124 to regulate opioid programs in compliance with subsections
125 (1) through (9), inclusive, of this section: *Provided*,
126 *however*, That any opioid treatment program facility that has
127 received a certificate of need pursuant to article two-d, of this
128 chapter by the Health Care Authority shall be permitted to
129 proceed to license and operate the facility. All existing
130 opioid treatment programs shall be in compliance within one
131 hundred eighty days of the effective date of the revised
132 emergency rules as required herein. The revised emergency
133 rules shall provide at a minimum:

134 (1) That the initial assessment prior to admission for
135 entry into the opioid treatment program shall include an
136 initial drug test to determine whether an individual is either
137 opioid addicted or presently receiving methadone for an
138 opioid addiction from another opioid treatment program. The
139 patient may be admitted to the program if there is a positive
140 test for either opioids or methadone or there are objective
141 symptoms of withdrawal, or both, and all other criteria set
142 forth in the rule for admission into an opioid treatment
143 program are met: *Provided*, That admission to the program
144 may be allowed to the following groups with a high risk of
145 relapse without the necessity of a positive test or the presence
146 of objective symptoms: Pregnant women with a history of
147 opioid abuse, prisoners or parolees recently released from
148 correctional facilities, former clinic patients who have
149 successfully completed treatment but who believe themselves
150 to be at risk of imminent relapse and HIV patients with a
151 history of intravenous drug use.

152 (2) That within seven days of the admission of a patient,
153 the opioid treatment program shall complete an initial
154 assessment and an initial plan of care. Subsequently, the
155 opioid treatment program shall develop a treatment plan of
156 care by the thirtieth day after admission and attach to the
157 patient's chart no later than five days after such plan is
158 developed. The treatment plan is to reflect that detoxification
159 is an option for treatment and supported by the program.

160 (3) That each opioid treatment program shall report and
161 provide statistics to the Department of Health and Human
162 Resources at least semiannually which includes the total
163 number of patients; the number of patients who have been
164 continually receiving methadone treatment in excess of two
165 years, including the total number of months of treatment for
166 each such patient; the state residency of each patient; the
167 number of patients discharged from the program, including
168 the total months in the treatment program prior to discharge
169 and whether the discharge was for:

170 (A) Termination or disqualification;

- 171 (B) Completion of a program of detoxification;
- 172 (C) Voluntary withdrawal prior to completion of all
173 requirements of detoxification as determined by the opioid
174 treatment program; or
- 175 (D) An unexplained reason.
- 176 (4) That random drug testing of patients be conducted
177 during the course of treatment. For purposes of these rules,
178 random drug testing shall mean that each patient of an opioid
179 treatment program facility has a statistically equal chance of
180 being selected for testing at random and at unscheduled
181 times. Any refusal to participate in a random drug test shall
182 be considered a positive test: *Provided*, That nothing
183 contained in this section or the legislative rules promulgated
184 in conformity herewith will preclude any opioid treatment
185 program from administering such additional drug tests as
186 determined necessary by the opioid treatment program.
- 187 (5) That all random drug tests conducted by an opioid
188 treatment program shall, at a minimum, test for the
189 following:

190 (A) Opiates, including oxycodone at common levels of

191 dosing;

192 (B) Methadone and any other medication used by the

193 program as an intervention;

194 (C) Benzodiazepine including diazepam, lorazepam,

195 clonazepam and alprazolam;

196 (D) Cocaine;

197 (E) Methamphetamine or amphetamine; and

198 (F) Other drugs determined by community standards,

199 regional variation or clinical indication.

200 A positive test is a test that results in the presence of any

201 drug or substance listed in this schedule and any other drug

202 or substance prohibited by the opioid treatment program;

203 (6) That a positive drug test result after the first six

204 months in an opioid treatment program shall result in the

205 following:

206 (A) Upon the first positive drug test result, the opioid

207 treatment program shall:

208 (1) Provide mandatory and documented weekly
209 counseling to the patient, which shall include weekly
210 meetings with a counselor who is licensed, certified or
211 enrolled in the process of obtaining licensure or certification
212 in compliance with the rules and on staff at the opioid
213 treatment program;

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

216 (B) Upon a second positive drug test result within six
217 months of a previous positive drug test result, the opioid
218 treatment program shall:

219 (1) Provide mandatory and documented weekly
220 counseling, which shall include weekly meetings with a
221 counselor who is licensed, certified or enrolled in the process
222 of obtaining licensure or certification in compliance with the
223 rules and on staff at the opioid treatment program;

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

226 (3) Provide mandatory documented treatment team
227 meetings with the patient.

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

230 (1) Provide mandatory and documented weekly
231 counseling, which shall include weekly meetings with a
232 counselor who is licensed, certified or enrolled in the process
233 of obtaining licensure or certification in compliance with the
234 rules and on staff at the opioid treatment program;

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

237 (3) Provide mandatory and documented treatment team
238 meetings with the patient which will include, at a minimum:
239 The need for continuing treatment; a discussion of other
240 treatment alternatives; and the execution of a contract with
241 the patient advising the patient of discharge for continued
242 positive drug tests.

243 (D) Upon a fourth positive drug test within a six-month
244 period, the patient shall be immediately discharged from the

245 opioid treatment program or, at the option of the patient, shall
246 immediately be provided the opportunity to participate in a
247 twenty-one day detoxification plan, followed by immediate
248 discharge from the opioid treatment program.

249 (7) That the opioid treatment program must report and
250 provide statistics to the Department of Health and Human
251 Resources demonstrating compliance with the random drug
252 test rules including confirmation that:

253 (A) The random drug tests were truly random in regard
254 to both the patients tested and to the times random drug tests
255 were administered by lottery or some other objective
256 standard so as not to prejudice or protect any particular
257 patient.

258 (B) The total number and the number of positive results;
259 and

260 (C) The number of expulsions from the program.

261 (8) That all opioid treatment facilities be open for
262 business seven days per week: *Provided*, That the opioid
263 treatment center may be closed for eight holidays and two
264 training days per year.

265 (9) That the Office of Health Facility Licensure and
266 Certification develop policies and procedures in conjunction
267 with the Board of Pharmacy that will allow access to the
268 Prescription Drug Registry maintained by the Board of
269 Pharmacy before administration of methadone or other
270 treatment in an opioid treatment program, after any positive
271 drug test, and at each ninety-day treatment review to ensure
272 the patient is not seeking prescription medication from
273 multiple sources.

274 (k) The secretary shall propose a rule for legislative
275 approval in accordance with the provisions of article three,
276 chapter twenty-nine-a of this code for the distribution of state
277 aid to local health departments and basic public health
278 services funds.

279 (1) The rule shall include the following provisions:

280 (A) Base allocation amount for each county;

281 (B) Establishment and administration of an emergency
282 fund of no more than two percent of the total annual funds of
283 which unused amounts are to be distributed back to local
284 boards of health at the end of each fiscal year;

285 (C) A calculation of funds utilized for state support of
286 local health departments;

287 (D) Distribution of remaining funds on a per capita
288 weighted population approach which factors coefficients for
289 poverty, health status, population density and health
290 department interventions for each county and a coefficient
291 which encourages counties to merge in the provision of
292 public health services;

293 (E) A hold-harmless provision to provide that each local
294 health department receives no less in state support for a
295 period of ~~three~~ four years beginning in the 2009 budget year.

296 (2) The Legislature finds that an emergency exists and,
297 therefore, the secretary shall file an emergency rule to
298 implement the provisions of this section pursuant to the
299 provisions of section fifteen, article three, chapter twenty-
300 nine-a of this code. The emergency rule is subject to the
301 prior approval of the Legislative Oversight Commission on
302 Health and Human Resources Accountability prior to filing
303 with the Secretary of State.

304 (1) Other health-related matters which the department is
305 authorized to supervise and for which the rule-making
306 authority has not been otherwise assigned.

NOTE: The purpose of this bill is to increase the time period in the hold-harmless provision, when distributing state aid to local health departments and basic public health services funds, from three years to four years.

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