

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2543

By Delegates Criss, Heckert, Fehrenbacher and W.

Hall

Introduced January 13, 2023; Referred to the

Committee on Prevention and Treatment of

Substance Abuse then Health and Human Resources

then the Judiciary

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-66-1, §16-66-2, §16-66-3, §16-66-4, §16-66-5, §16-66-6, §16-66-7, §16-
 3 66-8, §16-66-9, and §16-66-10, all relating to residential substance use disorder service
 4 programs; defining terms; establishing licensure application process for substance use
 5 disorder service programs; creating program requirements; establishing revocation
 6 process; setting forth the reconsideration process; setting forth the administrative due
 7 process provision; providing for administrative and judicial appeal; establishing reporting
 8 requirements and renewal provisions; setting requirements for continuum of care; and
 9 establishing civil penalties and injunctive relief.

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

ARTICLE 66. RESIDENTIAL SUBSTANCE USE DISORDER SERVICE PROGRAMS.

§16-66-1. Definitions.

1 As used in this article, the term:

2 "Administrator" means a person having the authority and responsibility for operation of a
 3 residential Substance Use Disorder ("SUD") service program and serves as the contact for
 4 communication with the Director of Health Facility Licensure and Certification.

5 "Applicant" means the entity applying for a license under this article.

6 "Board of Review" means the board established in §9-2-6(13) of this code.

7 "Core services" means the primary services a Substance Use Disorder service program
 8 undertakes in order to service its clients.

9 "Director" means the Director of the Office of Health Facility Licensure and Certification.

10 "Fixed site" means a building or single location where residential Substance Use Disorder
 11 services are provided.

12 "License" means the document issued by the Bureau authorizing the residential
 13 Substance Use Disorder service program to operate.

14 "Local health department" means a health department operated by local boards of health,

15 created, established, and maintained pursuant to §16-2-1 et seq. of this code.

16 "Location" means a site within the service area of a local health department. A location can
17 be a fixed site or a mobile site.

18 "Medication assisted treatment" means the use of Federal Drug Administration ("FDA")
19 approved drugs methadone, buprenorphine, or naltrexone in combination with counseling and
20 behavioral therapy to provide treatment of substance use disorders.

21 "Mobile site" means a location accessible by foot or vehicle that is not at a fixed indoor
22 setting. A provider shall have a fixed site located in West Virginia in order to operate a mobile site
23 in the state or have received an independent license to operate the mobile location.

24 "Outpatient" means substance use disorder treatment services by offering scheduled,
25 periodic care, including diagnosis and therapy, in a non-residential setting.

26 "Public comment period" means a 60-day public comment period commencing from the
27 date the applicant posts information about an application in a newspaper of general circulation in
28 the service area of the local health department.

29 "Residential" means Substance Use Disorder treatment services that are provided in a full
30 or partial residential setting. Such services may be supplemented with diagnostic services,
31 counseling, vocational rehabilitation, work therapy, or other services that are judged to be valuable
32 in a therapeutic setting.

33 "Residential detoxification" means a residential, medically acute or subacute, systematic
34 reduction of the amount of a drug in the body, or the elimination of a drug from the body
35 concomitant.

36 "SARF (Screening, Assessment, Referral, and Follow Up)" means Substance Use
37 Disorder services that offer a range of activities necessary to make preliminary assessments of
38 problems. The object of these activities, which may include interviews, psychological tests, and
39 other diagnostic or assessment tools, is to effect referrals to appropriate treatment or assistance
40 resources if indicated.

41 "Service area" means the territorial jurisdiction of the local board of health.

42 "Staff" means anyone who provides Substance Use Disorder services on behalf of a
43 licensed program.

44 "Treatment and Rehabilitation Services" means emergent, outpatient, intermediate, or
45 inpatient service and care. The services offered might include diagnostic evaluation, medical,
46 psychiatric, psychological, social service care, and referral services that may be extended to an
47 individual who is or appears to be incapacitated.

§16-66-2. Application for license to offer residential Substance Use Disorder service programs.

1 (a) All new and existing residential substance use disorder service programs shall require
2 a license.

3 (b) To be eligible for a license, a residential Substance Use Disorder service program shall:

4 (1) Submit an application to the Office for Health Facility Licensure and Certification on a
5 form approved by the director;

6 (2) Provide the name under which it will be operating;

7 (3) Provide a brief description of the services, including how each requirement for licensure
8 will be met (i.e. behavioral health, counseling, social service care, etc.);

9 (4) Provide the full name, title, email address, and telephone number of the individual
10 designated by the applicant as the administrator of the residential Substance Use Disorder service
11 program;

12 (5) Provide the hours of operation for the program's administrative office and a description
13 of staffing. The description of staffing must include number of staff, titles of positions, credentials or
14 training that ensure the needs of clients are met, and description of services;

15 (6) Provide a specific description of the proposed applicant's ability to provide onsite
16 medical care and mental health services, as well as social welfare and health promotion;

17 (7) Pay an application fee to be determined by the director;

18 (8) Provide a written statement from a majority of the county commission for the county in
19 which it is located or is proposing to locate, that the residential Substance Use Disorder service
20 program:

21 (A) Is not prohibited by local ordinance; and

22 (B) That a majority of the county commission supports the program; and

23 (9) Publish a notice beginning the 60-day public comment period, not to exceed 150 words,
24 in a newspaper of general circulation in the proposed service area and posted on the applicant's
25 website that provides a summary of the proposed application and includes the name of the
26 applicant's organization. The notice must state in all caps "PROPOSED RESIDENTIAL
27 SUBSTANCE USE DISORDER SERVICE PROGRAM IN" the proposed county. The public may
28 submit comments about an application during the 60-day public comment period.

§16-66-3. Program requirements.

1 (a) In order to be approved for a license, a residential Substance Use Disorder service
2 program shall offer the following, which shall be documented in the application:

3 (1) A full array of treatment and rehabilitation services including, but not limited to, the
4 following:

5 (A) Drug abuse treatment services;

6 (B) HIV and hepatitis screening and education;

7 (C) Hepatitis A, B, and C vaccination and testing;

8 (D) Screening for sexually transmitted diseases;

9 (E) The provision of long-term birth control;

10 (F) The provision of behavioral health services;

11 (G) Medication Assisted Treatment services;

12 (H) Overdose prevention supplies and education;

13 (I) Educational services related to disease transmission;

14 (J) Treatment shall be by a qualified licensed health care provider;

15 (K) The applicant shall provide SARF services to effect referrals to appropriate treatment
16 or assistance resources;

17 (L) The applicant shall make the appropriate referral to existing providers for treatment of
18 medical conditions; and

19 (M) Programmatic guidelines including an evidence-based staff training plan, a data
20 collection and program evaluation plan, and a community relations plan; and

21 (2) A staff training protocol including, but not limited to, the following:

22 (A) Orientation to the applicant's services and eligibility requirements of the program;

23 (B) Overview of the residential Substance Use Disorder services available in the program;

24 (C) Procedures for making referrals, including primary care, detoxification and medication
25 assisted treatment, HIV counseling and testing, prenatal care, tuberculosis, and Hepatitis A, B,
26 and C screening and treatment, and screening and treatment for sexually transmitted diseases;

27 (D) Education that demonstrates Naloxone administration;

28 (E) Cultural diversity and sensitivity to protected classes under state and federal law; and

29 (F) Training logs for attendance at mandatory, evidence-based training;

30 (3) A plan to coordinate with the continuum of care, including the requirements set forth in
31 this article.

32 (b) If an applicant for a license does not submit all of the documentation required in §16-66-
33 2 of this code, the application for a license shall be denied.

34 (c) If an applicant for a license fails to comply with the program requirements, then the
35 application shall be denied.

36 (d) If the license is granted it shall be effective for one year, subject to random inspection by
37 the Office of Health Facility Licensure and Certification and a request for renewal by the licensee.

§16-66-4. Procedure for revocation or limitation of the residential Substance Use Disorder
service program.

1 (a) The director may revoke or limit a needle exchange program's ability to offer services

2 for the following reasons:

3 (1) The residential Substance Use Disorder service program provides willful or intentional
4 false or misleading information to the director at any time;

5 (2) Monitoring or inspection indicates the residential Substance Use Disorder service
6 program is in violation of the law;

7 (3) The residential Substance Use Disorder service program fails to cooperate with the
8 director during the investigation of any complaint; and

9 (4) Recission of the letter of approval from majority of the county commissioners.

10 (b) The director shall send written notice to the program of revocation or limitation of its
11 operations. The written notice shall include the following:

12 (1) Effective date of the revocation or limitation;

13 (2) The basis for the revocation or limitation on the certificate;

14 (3) The location and facility to which the revocation or limitation applies;

15 (4) The remedial measures the residential Substance Use Disorder service program shall
16 take, if any, to consider reinstatement of the program or removal of the limitation; and

17 (5) Steps to request reconsideration or appeal of the decision.

§16-66-5. Reconsideration procedure.

1 (a) An owner or operator may request, in writing, reconsideration of a decision rendered by
2 the director on an action taken. If the request for reconsideration establishes good cause, then the
3 director shall grant the request. Upon request, the director may grant a public hearing to consider
4 the request for reconsideration.

5 (b) A request for reconsideration is considered to have shown good cause if, in a detailed
6 statement, it:

7 (1) Presents significant, relevant information not previously considered by the director, and
8 demonstrates that with reasonable diligence that information could not have been presented
9 before the board made its decision;

10 (2) Demonstrates that there have been significant changes in factors or circumstances
11 relied upon by the director in reaching its decision;

12 (3) Demonstrates that the board has materially failed to follow its adopted procedures in
13 reaching its decision; or

14 (c) The director shall receive a request for reconsideration within 30 days after the date of
15 the bureau's decision.

16 (d) The director or his or her designee shall hold a hearing, if any, upon a request for
17 reconsideration within 30 days of the bureau's receipt of the request. The director may extend this
18 time for good cause.

19 (e) The director shall issue its written decision which states the basis of its decision upon
20 request for reconsideration within 45 days after the conclusion of the hearing.

§16-66-6. Administrative due process.

1 (a) An owner or operator of a residential Substance Use Disorder service program who
2 disagrees with the final administrative decision may, within 30 days after receiving notice of the
3 decision, appeal the decision to the department's board of review.

4 (b) The program shall be required to be represented by legal counsel at the hearing.

5 (c) All pertinent provisions of §29A-5-1 et seq. of this code and §69-1-1 et seq. of this code
6 apply to and govern any hearing authorized by this statute.

7 (d) The filing of a request for a hearing does not stay or supersede enforcement of the final
8 decision of the director. The director may, upon good cause shown, stay such enforcement.

§16-66-7. Administrative appeals and judicial review.

1 (a) An owner or operator of a residential Substance Use Disorder service program who
2 disagrees with the final administrative decision may, within 30 days after the date the appellant
3 received notice of the decision of the board of review, appeal the decision to the Circuit Court of
4 Kanawha County or in the county where the petitioner resides or does business.

5 (b) The filing of the petition for appeal does not stay or supersede enforcement of the final

6 decision or order of the director. An appellant may apply to the circuit court for a stay of or to
7 supersede the final decision or order for good cause shown.

8 (c) No circuit court has jurisdiction to consider a decision of the board if the petitioner has
9 failed to file a request for review with the board of review within the time frame set forth in this
10 article.

§16-66-8. Reporting requirements; renewal requests.

1 (a) A residential Substance Use Disorder service program licensed pursuant to this statute
2 shall file a quarterly report with the director, by email, and file an annual request for renewal on the
3 anniversary date of license approval each and every year of the program's operation under the
4 director's review. The report shall include:

5 (1) The total number of persons served;

6 (2) Statistics regarding the number of individuals completing an evidence-based course of
7 treatment and rehabilitation; and

8 (3) The total numbers and types of referrals made to additional drug treatment and other
9 services.

10 (b) A residential Substance Use Disorder service program licensed pursuant to this statute
11 shall within 45 days prior to the expiration of the license, or at any other time directed by the
12 director, submit a report verified, in writing, by the administrator, containing the following
13 information:

14 (1) The current status of the project;

15 (2) The cause or causes of any delays encountered;

16 (3) Changes in the project; and

17 (4) The projected total cost.

18 (c) Upon good cause shown, and if the residential Substance Use Disorder service
19 program is in substantial compliance with the reporting requirements set forth in this section, the
20 director may grant a renewal for up to six months for the initial renewal period. Forty-five days prior

21 to the expiration of the license, the program shall submit a request for renewal addressing the
 22 criteria in subsection (b) of this section. In order to be considered for renewal, the residential
 23 Substance Use Disorder service program must be in substantial compliance with the reporting
 24 requirements of this section. Any subsequent renewal may be granted for up to 12 months.

§16-66-9. Civil penalties and injunctive relief.

1 (a) The Office of Health Facilities Licensure and Certification shall assess a civil penalty of
 2 not less than \$5,000 per day nor more than \$25,000 per year for a violation of this article.

3 (b)The Office of Health Facilities Licensure and Certification may seek injunctive relief to
 4 enforce the provisions of this article.

§16-66-10. Coordination with continuum of care.

1 (a) A provider shall coordinate with other existing providers in its services to render care to
 2 the individuals in residential Substance Use Disorder service program as set forth in the program
 3 requirements.

4 (b) In the event that the residential Substance Use Disorder service program is closed, the
 5 program shall notify the patient of the closure, prior to closure, in a conspicuous location and
 6 provide an individual notice to enable the person to transition their care.

NOTE: The purpose of this bill is to create a licensure procedure for residential Substance Use Disorder service programs. The bill defines terms; establishes licensure application process for substance use disorder service programs; creates program requirements; establishes revocation process; sets forth the reconsideration process; sets forth the administrative due process provision; provides for administrative and judicial appeal; establishes reporting requirements and renewal provisions; sets requirements for continuum of care; and establishes civil penalties and injunctive relief.

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