

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 475**

By Senators Tarr, Woelfel, and Takubo

[Originating in the Committee on Health and Human

Resources; reported January 25, 2024]

1 A BILL to amend and reenact §16-59-1, §16-59-2, and §16-59-3 of the Code of West Virginia,  
2 1931, as amended; to amend said code by adding thereto a new section, designated §16-  
3 59-4; and to amend and reenact §16-62-1 and §16-62-2 of said code, all relating to  
4 recovery residences; defining terms; amending the accreditation program to include  
5 protecting residents from human trafficking and patient brokering; requiring the collection  
6 of data from recovery residences; requiring the data collected be uniform among recovery  
7 residences; requiring rulemaking regarding the data to be collected; requiring stakeholder  
8 engagement to develop the rules; setting forth minimum data content; providing that the  
9 data shall be shared; providing privacy restrictions on data; requiring documentation  
10 verifying initial and continued registration be submitted; permitting an immediate jeopardy  
11 notice to be served in person; prohibiting recovery residence that has received a  
12 suspension or revocation notice from taking new residents; providing procedure for  
13 immediate jeopardy; permitting immediate revocation of certification if immediate jeopardy  
14 is not corrected prior to certifying agency leaving the premises; requiring transfer of  
15 residents in event immediate jeopardy is not corrected and setting forth timeframe;  
16 prohibiting recovery residence without a certificate of compliance from receiving a referral  
17 from stated entities; providing for a penalty if the referral is received in violation of this  
18 article; deleting requirement that certifying agency maintain and publish a list of recovery  
19 residences; clarifying that referral shall not be made unless recovery residence has a valid  
20 certificate of compliance; prohibiting all recovery residences from receiving funds from a  
21 resident that is in the form of a state benefit unless it holds a valid certificate of compliance;  
22 increasing penalties for violations; requiring all recovery residences to register with the  
23 Office of Health Facility Licensure and Certification; setting forth procedure for registration;  
24 permitting fee; setting term of registration as one year; providing for penalty for failure to  
25 register; providing due process; clarifying that recovery residences are subject to the  
26 Patient Brokering Act; requiring the Office of the Inspector General to review data to

27 determine if violations of the Patient Brokering Act have occurred; requiring referral to  
28 state, or local law-enforcement authorities to coordinate, investigate, or prosecute  
29 violations; requiring state or local law enforcement to investigate referral; permitting Office  
30 of Inspector General and certifying agency to coordinate investigations; permitting  
31 rulemaking; requiring the Office of Inspector General to receive data regarding recovery  
32 residences; and specifying document handling specifications.

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

**ARTICLE 59. CERTIFICATION OF RECOVERY RESIDENCES AND REGISTRATION.**

**§16-59-1.**

**Definitions.**

1 As used in this article, the term:

2 (1) "Certificate of compliance" means a certificate that is issued to a recovery residence by  
3 the department's appointed certifying agency.

4 (2) "Certified recovery residence" means a recovery residence that holds a valid certificate  
5 of compliance.

6 "Director" means the Director of the Office of Health Facility Licensure and Certification, or  
7 his or her designee.

8 (3) "Department" means the ~~Department of Health and Human Resources~~ Department of  
9 Human Services.

10 "Immediate jeopardy" means an issue of non-compliance that places the health and safety  
11 of residents of the recovery residence at risk for serious injury, serious harm, serious impairment,  
12 or death.

13 "Inspector General" means the Inspector General of the Office of Inspector General as  
14 described in §16B-2-1 of this code.

15 (4) "Recovery residence" means a single-family, drug-free, and alcohol-free residential  
16 dwelling unit, or other form of group housing, that is offered or advertised by any person or entity  
17 as a residence that provides a drug-free and alcohol-free living environment for the purposes of

18 promoting sustained, long-term recovery from substance use disorder.

**§16-59-2. Voluntary certification of recovery residences.**

1 (a) The department shall contract with an entity to serve as the certifying agency for a  
2 voluntary certification program for drug-free and alcohol-free recovery residences based upon  
3 standards determined by the National Alliance for Recovery Residences (NARR) or a similar  
4 entity. The certifying agency shall establish and implement an accreditation program for drug-free  
5 and alcohol-free recovery residences that shall maintain nationally recognized standards that:

6 (1) Uphold industry best practices and support a safe, healthy, and effective recovery  
7 environment;

8 (2) Evaluate the residence's ability to assist persons in achieving long-term recovery goals;

9 (3) Protect residents of drug- and alcohol-free housing against unreasonable and unfair  
10 practices in setting and collecting fee payments.

11 (4) Protect residents from human trafficking that may occur in the recovery residence  
12 setting.

13 (5) Protect patients from predatory practices that lead to patient brokering.

14 (b) The department shall require the recovery residence to collect, retain, and submit the  
15 following:

16 (1) Documentation verifying certification as specified and administered by the certifying  
17 agency;

18 (2) If a municipality or county offers or requires verification of compliance with local  
19 building, maximum occupancy, fire safety, and sanitation codes applicable to single-family  
20 housing, documentation of verification by the municipality or county where the recovery residence  
21 is located stating that the recovery residence is in compliance.

22 (3) Data from each registered recovery residence at intervals determined by the  
23 department, but not less than annually. The data shall be uniform across all recovery residences.

24 The department, in conjunction with applicable stakeholders to include, but not be limited to, the

25 Office of Inspector General, the Superintendent, or designee, of the West Virginia State Police, the  
26 West Virginia Sheriff's Association, and a representative of West Virginia National Alliance for  
27 Recovery Residences, shall propose rules for legislative approval in accordance with the  
28 provisions of §29A-3-1 et seq. to specify the data to be collected. The data variables shall include,  
29 but not be limited to, variables to allow the department, certifying agency, Office of Inspector  
30 General, and the West Virginia Fusion Center-Human Trafficking Division to conduct an analysis  
31 of the performance of recovery residences and to determine if patient brokering or human  
32 trafficking is occurring. The data shall be shared in personally identifiable form with the Office of  
33 the Inspector General, the certifying agency, and the West Virginia Fusion Center-Human  
34 Trafficking Division, with the appropriate Health Insurance Portability and Accountability Act  
35 safeguards in place to protect the data in transmission and in storage.

36 (4) Documentation verifying initial and continued registration as required in §16-59-4 of this  
37 code.

38 (c) If a municipality or county offers or requires verification of compliance with local  
39 building, maximum occupancy, fire safety, and sanitation codes applicable to single-family  
40 housing, the municipality or county must perform requested or required inspections within 30 days  
41 of receiving a request for verification. If a residence is located within a municipality or county that  
42 offers or requires verification of compliance with local building, maximum occupancy, fire safety,  
43 and sanitation codes applicable to single-family housing, and the municipality or county fails to  
44 perform requested or required inspections within 30 days of receiving a request for verification, the  
45 residence may apply for and be granted certification directly through the certifying agency without  
46 the aforementioned verification.

47 (d) Upon receiving a complete application, the certifying agency shall evaluate the  
48 residence to determine if the residence is in compliance with national best-practice standards,  
49 health, and safety requirements. Additionally, any application of the items specified in this section  
50 must comply with the Fair Housing Act, 42 U.S.C. §3601 et seq. and the Americans with

51 Disabilities Act of 2008, 42 U.S.C. §12101 *et seq.*

52 (1) If it is determined that the residence is in compliance, the certification agency shall  
53 issue a certificate of compliance to the recovery residence operator for the specific recovery  
54 residence location set forth in the application.

55 (2) Each residence location, even if operated by the same person or entity, must maintain a  
56 certificate of compliance for the purposes of this article.

57 (e) The certifying agency may suspend or revoke a certificate of compliance if the recovery  
58 residence is not in compliance with any provision of this section or has failed to remedy any  
59 deficiency identified in writing and served by certified mail unless the deficiency is an immediate  
60 jeopardy in which case it may be served in person. Suspension or revocation may take place after  
61 a notice of deficiency is served and has existed for at least 30 days, except in cases of an  
62 immediate jeopardy. After receipt of a suspension or revocation notice, the recovery residence is  
63 prohibited from accepting new residents and may only work to transfer residents to another  
64 certified recovery residence. If the certifying agency determines that an immediate jeopardy  
65 exists, then the operator will be provided a notice of deficiency, at the time of the certification visit,  
66 and the recovery residence shall immediately take actions to correct the listed deficiencies before  
67 the certification agency departs the premises. If the operator is unable to correct all of the listed  
68 deficiencies prior to the certifying agency departing the premises, then the certifying agency has  
69 the authority to revoke any applicable certification immediately and give the operator of the  
70 recovery residence up to five days to transfer existing residents to another certified recovery  
71 residence.

72 (f) Notwithstanding any other provision to the contrary, the certifying agency shall  
73 implement and maintain a process by which a residence whose certification has been suspended  
74 or revoked may apply for, and be granted, reinstatement. If a municipality or county offers or  
75 requires verification of compliance with local building, maximum occupancy, fire safety, and  
76 sanitation codes applicable to single-family housing, and if the residence's certification suspended

77 or revoked for noncompliance with local building, maximum occupancy, fire safety, and sanitation  
78 codes applicable to single-family housing, the municipality or county may charge a fee of up to  
79 \$100 for any requested reinspection of a recovery residence by the residence seeking  
80 reinstatement.

81 (g) The department shall periodically evaluate the quality, integrity, and efficacy of the  
82 accreditation program developed. The department shall promulgate rules subject to legislative  
83 approval in accordance with §29A-3-1 *et seq.* of this code to implement this section that shall  
84 include a process for receiving complaints against drug-free and alcohol-free recovery residences  
85 and criteria by which such residences' certifications can be revoked.

86 (h) A person may not advertise to the public any recovery residence as a "certified recovery  
87 residence" unless the recovery residence has first secured a certificate of compliance under this  
88 section. A person who violates this subsection commits a misdemeanor, punishable by a fine of  
89 not less than \$1,000 nor more than \$5,000 for each infraction.

90 (i) This article does not permit a structure that would not be normally classified as a single-  
91 family dwelling to be exempt from the state building code or fire code.

92 (j) Nothing herein shall be read to require any recovery residence to obtain certifications  
93 set forth herein in order to conduct operations: Provided, That a recovery residence without a valid  
94 certificate of compliance, as provided in §16-59-2 of this code, is prohibited from receiving a  
95 referral for the placement of any prisoner, parolee, probationer, or prospective, current, or  
96 discharged patient, or client from the Division of Corrections and Rehabilitation, the Parole Board,  
97 the county probation offices, day report center, municipal courts, or a medical or clinical treatment  
98 facility that receives funds for its operations from the State Treasury. A person who violates this  
99 subsection commits a misdemeanor, punishable by a fine of not less than \$1,000 nor more than  
100 \$5,000 for each infraction.

**§16-59-3. Referrals to recovery residences; prohibitions; receipt of state funds.**

1 ~~(a) The certifying agency shall maintain, publish, and disseminate a list of drug and~~

2 ~~alcohol free housing certified pursuant to this section. This list shall be disseminated to the~~  
3 ~~department for use by each state agency or vendor with a statewide contract that provides~~  
4 ~~substance use disorder treatment services. The list shall also be posted on the website maintained~~  
5 ~~by the certifying agency.~~

6 (b) (a) The Division of Corrections and Rehabilitation, the Parole Board, county probation  
7 offices, day report centers, municipal courts, and a medical or clinical treatment facility that  
8 receives any funds for its operations from the State Treasury ~~may~~ shall not make a referral of any  
9 prisoner, parolee, probationer, or prospective, current, or discharged patient, or client to a recovery  
10 residence unless the recovery residence holds a valid certificate of compliance as provided in §16-  
11 59-2 of this code.

12 (c) (b) No recovery residence is eligible to receive funds from any source within the State  
13 Treasury unless it holds a valid certificate of compliance as provided in §16-59-2 of this code.

14 (c) No recovery residence is eligible to receive funds from a resident that is in the form of a  
15 state benefit, including, but not limited to, Medicaid, Temporary Assistance for Needy Families, or  
16 the Supplemental Nutrition Assistance Program, unless it holds a valid certificate of compliance  
17 from the certifying agency as provided in §16-59-2 of this code. The certifying agency may set  
18 forth additional requirements for the appropriate use of such benefits within a recovery residence.

19 (d) A state agency and a medical or clinical treatment facility that receive funds for its  
20 operation from the State Treasury, that make referrals to recovery residences shall maintain  
21 records of referrals to or from recovery residences.

22 (e) Nothing in this section requires a state agency or a clinical or medical provider to make  
23 a referral of a person to a recovery residence.

24 (f) A person who violates this section commits a misdemeanor, punishable by a fine of not  
25 less than ~~\$500~~ \$1,000 nor more than ~~\$1,000, \$5,000,~~ unless otherwise specified.

**§16-59-4. Registration of recovery residences.**

1 (a) Prior to conducting business in the State of West Virginia a recovery residence shall

2 register with the Office of Health Facility Licensure and Certification. Existing recovery residences  
3 have six months from the effective date of this section to register. The director shall make an  
4 application form available on its publicly accessible internet website that include a request for the  
5 following information:

6 (1) The identity, address, and telephone number of the applicant;

7 (2) The name, business address, and telephone number of the contact person for the  
8 applicant;

9 (3) When applicable, the federal employer identification number for the applicant; and

10 (4) Any other information the director considers necessary and appropriate to establish a  
11 complete registration of an applicant.

12 (b) Term and fee. —

13 (1) The terms of registration shall be one year from the date of issuance;

14 (2) The fee shall be submitted by the applicant with an application for registration. An  
15 application fee for initial registration or renewal registration fee is nonrefundable;

16 (3) The amount of the initial registration fee and the renewal registration fee is \$1,000:  
17 Provided, That the director may annually adjust the initial and renewal registration fee for inflation  
18 based upon the consumer price index.

19 (c) Registration. —

20 (1) The director shall issue a registration, as appropriate, to an applicant when the director  
21 determines an applicant has submitted a complete application and paid the required registration  
22 fee.

23 (2) The registration may be in paper or electronic form, is nontransferable, and shall  
24 prominently list the expiration date of the registration.

25 (3) A list of all recovery residences shall be made available on the director's publicly  
26 accessible internet website.

27 (d) Penalties. —

28           (1) A civil monetary penalty of up to \$20,000 a day may be assessed against an owner  
29 who operates, owns, or manages an unregistered recovery residence. Each day of the continuing  
30 violation after the civil monetary penalty is assessed may be considered a separate violation. The  
31 initial notice of non-compliance shall be provided to the owner via certified mail, return receipt  
32 requested.

33           (B) If the recovery residence is not registered within 30 days from the date of receipt of the  
34 initial notice, the director shall notify the certifying agency to revoke the recovery residence's  
35 certificate of compliance, issued pursuant to §16-59-2 of this code, for non-compliance with this  
36 section.

37           (C) If the recovery residence is not registered within 30 days from the date of receipt of the  
38 initial notice, and if such recovery residence does not have a certificate of compliance, then the  
39 director shall issue a closure notice to the recovery residence for non-compliance with this section.

40           (e) Due process. —

41           (1) Within 10 days of the date of receipt of a notice provided pursuant to subsection (d), the  
42 recovery residence's owner may submit a request for an administrative hearing before the Board  
43 of Review for an informal meeting to address the notice and the reason stated therefor.

44           (2) The recovery residence's owner or owners and the Office of Health Facility Licensure  
45 and Certification will be entitled to representation by legal counsel at the informal meeting and at  
46 the administrative hearing at their own expense, respectively.

47           (3) All of the pertinent provisions of §29A-5-1 et seq. of this code and applicable legislative  
48 rules governing administrative hearings for the Board of Review shall apply to and govern any  
49 formal hearing authorized by this article.

50           (4) If the recovery residence's owner fails to request a hearing within the time frame  
51 specified, he or she shall be subject to the full limitation, enforcement action, penalty, or any  
52 combination thereof, imposed pursuant to this section.

53           (5) The filing of a request for an administrative hearing or an informal meeting does not

54 stay or supersede the enforcement of a limitation, enforcement action, penalty, or any combination  
55 thereof, imposed pursuant to this section.

56 (6) Any party who is dissatisfied with the decision of the Board of Review as a result of a  
57 formal hearing provided in this section, may within 30 days after receiving notice of the decision,  
58 petition the West Virginia Intermediate Court of Appeals, in term or vacation, for judicial review of  
59 the decision.

60 (7) The court may affirm, modify, or reverse, the decision of the Board of Review and either  
61 the applicant or the registrant, or the Inspector General may appeal the court's decision to the  
62 West Virginia Supreme Court of Appeals.

63 (8) Notwithstanding the existence of, or pursuant to any other remedy, the Inspector  
64 General may, in the manner provided by law, maintain an action in the name of the state for an  
65 injunction against any person, partnership, association, or corporation, to restrain or prevent the  
66 establishment, conduct, management, or operation of any recovery residence for violation of any  
67 provision of this section or any rule lawfully promulgated thereunder without first obtaining a  
68 registration in the manner herein provided.

## **ARTICLE 62. THE PATIENT BROKERING ACT.**

### **§16-62-1. Definitions.**

1 For the purposes of this article:

2 "Department" means the Department of Human Services.

3 "Health care provider or health care facility" means any person or entity licensed, or  
4 certified, or authorized by law to provide professional health care service in this state to a patient  
5 during that patient's medical, remedial, or behavioral health care, treatment, or confinement.

6 "Health care provider network entity" means a corporation, partnership, or limited liability  
7 company owned or operated by two or more health care providers, and organized for the purpose

8 of entering into agreements with health insurers, health care purchasing groups, or the Medicare  
9 or Medicaid program.

10 "Health insurer" means any insurance company authorized to transact health insurance in  
11 the state, any insurance company authorized to transact health insurance or casualty insurance in  
12 the state that is offering a minimum premium plan or stop-loss coverage for any person or entity  
13 providing health care benefits, any self-insurance plan, any health maintenance organization, any  
14 prepaid health clinic, any prepaid limited health service organization, any multiple-employer  
15 welfare arrangement, or any fraternal benefit society providing health benefits to its members.

16 "Recovery residence" has the same meaning as set forth in §16-59-1 of this code.

**§16-62-2. Patient brokering prohibited.**

1 (a) It is unlawful for any person, including any health care provider, ~~or~~ health care facility, or  
2 recovery residence to:

3 (1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or  
4 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to  
5 induce the referral of a patient or patronage to or from a health care provider, ~~or~~ health care facility  
6 or recovery residence;

7 (2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or  
8 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in  
9 return for referring a patient or patronage to or from a health care provider ~~or~~ health care facility, or  
10 recovery residence;

11 (3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or  
12 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in  
13 return for the acceptance or acknowledgment of treatment from a health care provider, ~~or~~ health  
14 care facility, or recovery residence;

15 (4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this

16 subsection; or

17 (5) Engage in any of the unlawful acts provided for in this subsection in regard to a  
18 recovery residence as defined in §16-59-1 of this code;

19 (b) Penalties –

20 (1) Any person who violates the provisions of subsection (a) of this section is guilty of a  
21 felony and, upon conviction thereof, shall be fined not more than \$50,000, or imprisoned in a state  
22 correctional facility for not less than one year nor more than five years, or both fined and  
23 imprisoned.

24 (2) Notwithstanding the provisions of subdivision (1) of this section, any person who  
25 violates subsection (a) of this section, where the prohibited conduct involves 10 or more patients,  
26 is guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000, or  
27 imprisoned in a state correctional facility not less than two years nor more than five years, or both  
28 fined and imprisoned.

29 (c) The Office of the Inspector General shall develop a tool that facilitates the submission of  
30 complaints. The Office of the Inspector General shall investigate complaints, review data for  
31 violations of this article, and ~~enforce the provisions of this article.~~ shall refer matters to state, or  
32 local law-

33 enforcement authorities to coordinate, investigate, or prosecute violations of this article.

34 (d) Law enforcement shall investigate each referral upon receipt for violation this article.

35 (e) The Office of the Inspector General shall receive data from the department related to  
36 recovery residences based upon intervals determined by the department, but not less than  
37 annually. This data may contain personally identifiable health information. It shall be transmitted  
38 and stored in conformity with applicable Health Insurance and Portability and Accountability Act  
39 standards.

40 (f) The Office of the Inspector General and the certifying agency set forth in §16-59-2 et  
41 seq. of this code may coordinate investigations as further set forth in legislative rule.

