

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Department of Health and Human Resources (WVDHHR) TITLE NUMBER: 64

CITE AUTHORITY: §17C-5A-3

AMENDMENT TO AN EXISTING RULE: YES NO

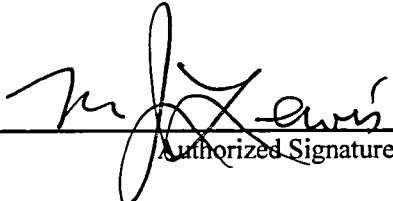
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 98

TITLE OF RULE BEING AMENDED: DUI Safety and Treatment

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

FILED

TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

2011 DEC 14 PM 3: 15

SERIES 98
SAFETY AND TREATMENT
PROGRAM

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§64-98-1. General

- 1.1. Scope. – This legislative rule establishes a comprehensive safety and treatment program for persons found in initial and subsequent violation of W.Va. Code §§ 17C-5-1 *et seq.* and 17C-5A-1 *et seq.*
- 1.2. Authority. – W. Va. Code §§ 17A-2-9 and 17C-5A-3.
- 1.3. Filing Date. –
- 1.4. Effective Date. –

§64-98-2. General.

- 2.1. Application – This legislative rule applies to all persons involved in the West Virginia Safety and Treatment Program Administered by the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse pursuant to W.Va. Code §17C-5A-3.
- 2.2. Enforcement – Enforcement of this legislative rule is vested with the Secretary of the Department of Health and Human Resources.

§64-98-3. Definitions.

The following definitions apply in the interpretation and enforcement of this legislative rule.

~~3.1. Centers – the Community Behavioral Health Centers and Guilds regulated by the Department of Health and Human Resources and contracted by the Department of Health and Human Resources as the provider agency for services relating to the Safety and Treatment Program.~~

~~3.1. Code – The Code of West Virginia of 1931, as amended.~~

3.1. Secretary – The executive officer of the Department of Health and Human Resources as appointed by the Governor.

3.2. Department – The Department of Health and Human Resources.

3.3. DUI – Any act which would constitute a violation of W.Va. Code §17C-5-2.

3.4. License – Any permit issued by the Commissioner of the ~~Department~~ Division of Motor Vehicles for the purpose of operating a motor vehicle. ~~in this state.~~

3.5. Participant – ~~A person enrolled in the Safety and Treatment Program.~~ A person enrolled in the West Virginia Safety and Treatment Program who has been charged with a DUI in the state of West Virginia or a West Virginia resident who has been charged with a DUI in another state.

3.6. Program – The West Virginia Safety and Treatment Program established pursuant to W.Va. Code §17C-5A-3.

3.7. Provider – An entity, including the Comprehensive Community Behavioral Health Centers as defined in W.Va. Code §27-2a-1, regulated by the Department of Health and Human Resources that provides Safety and Treatment Programs pursuant to a grant an agreement or a Memorandum of Understanding with the Department or an entity with an approved program operating in another state.

~~3.9. Sliding Fee Scale—The scale of fees charged by the providers for services rendered over and above the basic Level 1 Program Safety and Treatment Program enrollment fee.~~

§64-98-4. Program Responsibilities.

4.1. The ~~Department~~ Division of Motor Vehicles is responsible for licensure to operate a motor vehicle and any changes to licensure.

4.2. The ~~Department of Health and Human Resources~~ is responsible for establishing a comprehensive safety and treatment program for persons found in violation of W. Va. Code §§17C-5-1 *et seq.* and 17C-5A-1 *et seq.* The Department shall fulfill this responsibility by developing a Program and contracting with the Community Behavioral Health Centers and other providers to conduct the Program. The Department is also responsible for ensuring that services rendered through the Program providers, both in and out of state, are delivered by competent and qualified professionals. The Department is also responsible for the development of program standards for individuals involved in the service delivery, for approval of program curriculum for in and out of state providers and for the monitoring of compliance by providers with the standards.

4.3. West Virginia licensed Community Behavioral Health Providers Centers and other providers shall offer and operate the Program under contract with the Department of Health and Human Resources.

§64-98-5. Program Levels of Referral.

5.1. Initial Notification – ~~A person is notified of~~ The Commissioner of the Division of Motor Vehicles shall issue an eOrder of License Revocation ~~The person is advised~~ and shall communicate of the procedures for participation in the Program and the conditions to be met before license reinstatement.

5.2. Initial Assessment – The first phase of the Program consists of an enrollment session and a period of Assessment, conducted by ~~the Centers~~ a provider, for determining which Program levels are appropriate for each participant to complete. The assessment shall use:

5.2.a. Objective information such as the participant's blood alcohol content; various assessment tests as defined in the Program standards such as the Michigan Alcoholism Screening Test (MAST), the Drug Abuse Screening Test (DAST), the Numerical Drinking Profile (NDP) and the McAndrews Scale of the Minnesota Multiphasic Personality Inventory (MMPI); and prior driving under the influence, public intoxication, and other substance abuse related arrests;

5.2.b. Subjective information based on the participant's problems involving family, employment, education or training, financial, medical, recreational, emotional, legal and substance abuse problems; and

5.2.c. Information on the participant's interpersonal relationships, and his or her own observation of his or her present status, the evaluator's observations of the participant, and any other significant information that is available; and

5.2.d. American Society of Addiction Medicine (ASAM) criteria to determine the appropriate level of service for participant referral. A participant found to not meet American Society of Addiction Medicine (ASAM) criteria for any level of service must still be referred for the Level I Prevention and Education Component.

5.3. Level I. Prevention and Education Component – ~~A The Center~~ provider shall refer a participant who through the assessment phase is evaluated as not having a significant substance abuse problem to Level I. This level is informational and educational in nature and is intended to create an awareness of the misuse of alcohol and other drugs, particularly as the use relates to the operation of a motor vehicle. The Level I component consists of a minimum of ~~nineteen~~ eighteen hours and shall include the following:

- 5.3.a. Defensive Driving Instruction or other safety driving instruction;
- 5.3.b. Substance Abuse Education, of which at least one hour shall be an orientation to Alcoholics Anonymous, Narcotics Anonymous or other similar entity provided by a member of one of those organizations; and
- 5.3.c. One individual counseling session after the classroom instruction. This session shall be used to evaluate the participant's need for further services. If the counselor determines in the counseling session that the participant has not benefited significantly from participation in the program or has demonstrated a lack of involvement, additional prevention and education activities may be required to fulfill the completion criteria for Level I. The participant shall be is responsible for the costs of any additional prevention and education activities.

5.4. Level II, Intervention and Treatment Component – ~~The Center-A~~ provider shall refer a participant who it considers as having an abuse problem according to the American Society of Addiction Medicine's (ASAM) criteria as set forth in the Program Standards ~~potential, probable, early-stage or middle-stage substance abuse problem~~ to Level II of the Program. This level consists of individual or group outpatient counseling on a frequency correspondent to the determined need. Each Level II, The participant shall complete a Level I, Prevention and Education program. A Participant shall attend meetings of Alcoholics Anonymous, Narcotics Anonymous or other similar entity, verification of attendance shall also be required.

5.5. Level III, Intensive Care Component – ~~The Center-A~~ provider shall refer a participant who is assessed as having an abuse problem according to the American Society of Addiction Medicine's (ASAM) criteria as set forth in the Program Standards ~~late stage substance abuse problem~~ to Level III. A ~~P~~participant at this level shall participate in an intensive treatment program which will have total abstinence as its goal. The intensive treatment component consists of intensive outpatient or residential treatment ~~or partial hospitalization~~ designed specifically for substance abuse treatment. ~~A Participant shall attend meetings of Alcoholics Anonymous, Narcotics Anonymous or other similar entity verification of attendance shall also be required. The participant shall complete Completion of a Level I, Prevention and Education Component and Level II, Intervention Treatment Component. for aftercare purposes. is also required prior to Level III.~~

§64-98-6. Staff Qualifications.

6.1. Center Provider Responsibilities – Each Center provider is responsible for ensuring that the services provided through the Program are delivered by competent and qualified professionals who meet the requirements as established in the Program Standards published by the Department. Each Center provider shall provide the Department with the names, training and job functions performed by ~~of~~ all persons providing services for the Program.

6.2. Assessment. Evaluation and Treatment – A person providing services for the Assessment,

Evaluation, and Treatment aspects of the Program shall have at least one year work experience in the field of substance abuse treatment, or have attained the necessary skills through training, education, experience and supervision.

6.3. Prevention and Education – A person providing services for the Prevention and Education component of the program shall have at least one year of work experience in the field of substance abuse prevention, and education, and or treatment. ~~or have attained the necessary skills through training, education, experience and supervision.~~

6.4. Defensive Driving or other safety driving instruction – ~~A~~ a person providing services for the course of defensive driving or other safety driving instruction shall be a qualified instructor as defined in the Program Standards.

6.5. Program Coordinator – Each Center provider shall designate a DUI Program Coordinator whose function is to supervise the performance of the terms of the contract between the Center provider and the Department. The Program Coordinator shall also work with the Department for the purposes of program Development and procedural refinement. The Program Coordinator shall meet or exceed the minimum criteria set forth in the Program Standards. ~~at a minimum, be a Clinical Certified Addictions Counselor.~~

§64-98-7. Program Participant Evaluation.

7.1. Referral Evaluation Report – Based on the information gathered during the initial assessment as described in subsection 5.2 of this legislative rule, the Center provider shall make a referral evaluation report on each participant on the form prescribed by the Department. The Center provider shall forward a copy of each report to the Department.

7.2. Change in Status – ~~The Center~~ A provider may change a participant's Program level status following the initial assessment based upon application of the prescribed American Society of Addiction Medicine (ASAM) criteria. When a Center provider changes a participant's status, it shall notify the Department by submitting a revised Referral Evaluation Report.

7.3. Status Evaluation Report – the Center provider shall submit a Status Evaluation Report ~~on~~ for each participant to the Department, on the prescribed form, upon completion of the Program.

~~7.4. Overall Responsibility – By virtue of its legislative mandate relative to the Safety and Treatment Program, overall responsibility for the level and quality of treatment provided by the Center provider for any participant rests with the Secretary.~~

~~7.45.~~ Appeal of Referral – Each Center Provider shall establish procedures for resolving Participant questions concerning referral level and status evaluation.

§64-98-8. Fiscal Procedures.

8.1. Program Enrollment and Level 1 Component Fee – The initial fee for enrollment in the West Virginia Program shall be Four Hundred Dollars (\$400.00). This fee covers the provision of the Level 1 Prevention and Education ~~treatment~~ component as described in Subsection 5.3 of this legislative rule. The Participant shall pay the fee upon enrollment at with the Center provider, unless he or she is found to be indigent.

8.2. Additional Services – The cost for all counseling and treatment services provided in addition to the Level I component as described in Subsection 5.3 of this legislative rule is the responsibility of the participant. Each Center provider shall charge for additional services in accordance with its prevailing fee schedule for comparable services. ~~If a Participant cannot afford the full fee for additional services a sliding fee scale shall be used.~~

8.3. Indigent Participant – A participant may request an indigent determination for a full waiver of enrollment fees for the provision of the Level I Prevention and Education component provided that the participant meets each of the following criteria: A West Virginia resident person who is determined to be indigent by an approved the Center Provider operating within West Virginia may be eligible for a or a reduction in the fees for the participation of the Program.

8.3.a. Participant must have household A West Virginia Participant resident person (or Participant) with family income equal to or below one hundred per cent of the federal poverty standard, making adjustments for family size. , shall determine to be indigent, qualifying that person for sponsorship for the full amount of fees relating to enrollment in the Level I, Prevention and Education Component as set forth in Subsection 5.3 of this rule.

8.3.b. A person (or Participant) with family income between one hundred and two hundred per cent of the federal poverty standard, adjusted for family size, shall be determined to be indigent, qualifying for discounts from fees related to enrollment fees and participation in the Program in accordance with the established sliding fee schedule and policies regarding individual financial circumstances.

8.3.b. Participant shall be a resident of West Virginia and provide documentation thereof.

8.3.c. Participant must enroll in a program operated by a provider approved by, and operating within West Virginia.

8.4. The Department of Health and Human Resources Safety and Treatment Fund – Upon enrollment in the Program, the participant shall pay to the provider the sum of Four Hundred Dollars (\$400.00) except for those participants which are determined to be indigent under Subsection 8.3 of this rule to be indigent. The provider shall remit to the Department the sum of Two Hundred Twenty Five Dollars (\$225.00) One Hundred Twenty Five Dollars (\$125.00) and the provider shall retain One Hundred Seventy Five Dollars (\$175.00) Two Hundred Seventy Five Dollars (\$275.00). The Department shall deposit One Hundred Twenty Five Dollars (\$125.00) Seventy Five Dollars (\$75.00) of this sum in the Department of Health and Human Resources Safety and Treatment fund, to be used to reimburse providers for their portion of the enrollment fee for persons qualifying for indigent status. The remaining Fifty Dollars (\$50.00) shall be used by the Department for the administration of the Program. The Department is also responsible for collecting the One Hundred Twenty Five Dollars (\$125.00) per participant from West Virginia residents that participate in a Safety and Treatment Program in another state and from drivers that receive a DUI in West Virginia and participate in another state's approved program.

§64-98-9. Reinstatement of License.

9.1. Completion of Program – In order to successfully complete the Program, a participant shall complete the prescribed level or levels of treatment, receive a favorable Status Evaluation Report and pay all applicable costs for program participation.

9.2. Payment of Reinstatement Fees – A The Program participant shall must satisfy all financial obligations to the Department and the Division of Motor Vehicles before the reinstatement of his or her license will be considered whether a participant resides in West Virginia or in another state.

9.3. Final Decision – Subject to the provisions of W.Va. Code §17C-5A-3(b)(2), the final decision on license reinstatement is vested with the Commissioner of Motor Vehicles.