

TITLE 64 SERIES 103
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
EXPEDITED PARTNER THERAPY

The Bureau of Public Health received one letter containing these public comments from Paula F. Taylor, RPh, MD, President and Brian O. Foy, Executive Director, of the West Virginia State Medical Association:

Comment #1

Instead of specifically identifying diseases subject to EPT, the proposed rules should include a reference to the CDC's EPT treatment guidelines so that future CDC treatment guidelines may be incorporated into the rule series without legislative review.

Response #1

Unfortunately, a legislative rule may not include provisions that delegate the Legislature's policy making authority to the CDC. Although statutes or rules adopting laws or regulations of other states, the federal government, or of its agencies, effective at time of adoption are valid, attempted adoption of future laws, rules or regulations of other states or the federal government or of its agencies is unconstitutional as an unlawful delegation of the legislative power. If the proposed rule were to include such a provision it would, in effect, authorize the CDC to modify a legislative rule without legislative review, and thus would be unlawful.

Comment #2

In the alternative, the proposed rule should include trichomoniasis in the definition of a sexually transmitted diseases.

Response #2

The Secretary has considered your alternative recommendation that the proposed rule include trichomoniasis in the definition of a sexually transmitted disease. Although, there is a potential benefit to adding trichomoniasis to the definition of a sexually transmitted disease for the purpose of expedited partner therapy, because of the significant disulfiram-like reaction to the consumption of alcohol during treatment with nitroimidazoles (the most commonly prescribed treatment for trichomoniasis), the Secretary believes additional study of the implementation of expedited partner therapy for the treatment of trichomoniasis is prudent so as to avoid an inadvertent negative impact on the availability of this treatment option.

Comment #3

Prescribers be permitted to replace a patient's name with "EPT" on a prescription.

Response #3

While such a provision may be good policy, the Secretary is without authority to authorize the practice. Instead, I would encourage you to request the adoption of the recommendation by the West Virginia Board of Pharmacy.

Summary

Agency modifications to proposed rule.

Finally, the text of the proposed rule is modified to include a substantive provision in a new section 3. As initially filed, the rule series contained only a definition for the phrase “sexually transmitted disease” without any substantive provision that specifically complied with the requirement contained in W.Va. Code § 16-4F-5 that the Secretary of the Department of Health and Human Resources propose rules for legislative approval to designate certain diseases as sexually transmitted diseases that may be treated by expedited partner therapy. The rule series as initially filed for public comment provided only a definition without specifically designating the sexually transmitted diseases that may be treated by expedited partner therapy. The addition of section 3 is in response to a concern that rule series as initially filed may be argued to include the Secretary’s definitive and uniform designation of sexually transmitted diseases for any purpose, including requirements contained in the reportable disease rule. To avoid this potentially dangerous application of the definition, the rule series is modified to include a definitions for the terms “Expedited partner therapy” and “Health care professional” that are consistent with the authorizing statute, and a new section 3 that provides an explicit designation of sexually transmitted diseases that may be treated by expedited partner therapy.

August 10, 2016

Brian J. Skinner,
General Counsel
WV DHHR, Bureau of Public Health
350 Capitol Street, Room 702
Charleston, WV 25301

Dear Mr. Skinner:

The WVSMA appreciates the opportunity to comment on the proposed rule regarding Expedited Partner Therapy (EPT), §64-103-1.

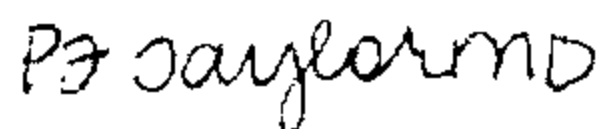
Together with the WV Perinatal Partnership, the WVSMA applauds the WV Legislature's passage of SB 123, and we believe the new law, along with the proposed rule, will help reduce the incidence of STDs. We are grateful for the DHHR's efforts to provide a concise rule to specify which diseases can be effectively treated by EPT.

We believe that, to be as effective as possible, this rule should be as broad as possible. For that reason, we recommend the following: The diseases identified in the rule have been recommended for EPT by the Centers for Disease Control (CDC). One minor change that we recommend, in order to ensure that the rule includes any new recommendations that the CDC might add, would be to reference the CDC treatment guidelines for EPT, as is done in a number of other states. Alternatively, we recommend adding trichomoniasis to the two diseases already specified in the rule, which the CDC's guidelines mention as a disease to potentially include, and as Ohio law specifically allows.

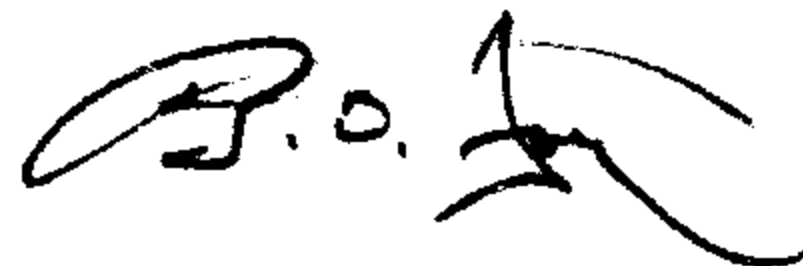
We also suggest that it would be helpful to provide instructions for prescribers who wish to provide an EPT prescription. For example, the prescriber could write "EPT" in place of the patient's name on the prescription. The WV Board of Pharmacy could then update their rules to accommodate this.

Again, thank you for your work on the rule, and the WVSMA appreciates the effort to provide an effective means of reducing the spread of STDs.

Sincerely,



Paula F. Taylor, RPh, MD
President



Brian O. Foy
Executive Director