



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Motor Vehicles TITLE-SERIES: 91-15
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 91-15 Safety and Treatment Program

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Codes §§ 17A-2-9 and 17C-5A-3

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

New Rule. This rule is being mandated per session rule 90. This legislative rule establishes a comprehensive safety and treatment program for persons found in initial and subsequent violation of W.Va. Codes §§ 17C-5-1 et seq. and 17C-5A-1 et seq.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/17/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/16/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

New Rule. This rule is being mandated per session rule 90. This legislative rule establishes a comprehensive safety and treatment program for persons found in initial and subsequent violation of W.Va. Codes §§ 17C-5-1 et seq. and 17C-5A-1 et seq.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

New Rule. This rule is being mandated per session rule 90. This legislative rule establishes a comprehensive safety and treatment program for persons found in initial and subsequent violation of W.Va. Codes §§ 17C-5-1 et seq. and 17C-5A-1 et seq.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no economic impact on revenues of state government.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

There is no economic impact on the state or its residents.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes
 Ronald David Johnson Jr Mba -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 91
LEGISLATIVE RULE
DIVISION OF MOTOR VEHICLES

SERIES 15
SAFETY AND TREATMENT PROGRAM

§91-15-1. 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. -- _____

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

§91-15-2. Application and Enforcement.

2.1. Application. -- This legislative rule applies to all persons involved in the West Virginia Safety and Treatment Program administered by the Division of Motor Vehicles pursuant to W. Va. Code §17C-5A-3.

2.2. Enforcement. -- Enforcement of this legislative rule is vested with the Commissioner of Motor Vehicles.

§91-15-3. Definitions.

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

3.1. Commissioner. -- The executive officer of the Division of Motor Vehicles as appointed by the Governor.

3.2. Division. -- The Division of Motor Vehicles.

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

3.4. License. -- Any permit issued by the Commissioner of the Division of Motor Vehicles for the purpose of operating a motor vehicle.

3.5. Order of Revocation -- A final order of revocation issued by the Division which is not being challenged in any forum.

3.6. Participant. -- 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.

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

3.8. Provider. -- Community Behavioral Health Centers regulated by the Department of Health and Human Resources that are authorized to provide the Safety and Treatment Programs or an entity with an approved program operating in another state.

3.9 – Testing Center – A facility approved by the Division to provide testing services for the detection of controlled substances or drugs.

§91-15-4. Program Responsibilities.

4.1. The Division 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 Division shall fulfill this responsibility by developing a Program and authorizing the Community Behavioral Health Centers and other providers to conduct the Program. The Division is also responsible for ensuring that services rendered through providers, both in and out of state, are delivered by competent and qualified professionals. The Division 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.

§91-15-5. Program Levels of Referral.

5.1. Initial Notification. -- An Order of Revocation that is issued to the participant advising of the requirement for participation in the Program and all other conditions to be met before full license reinstatement. No person may enroll or participate in the Safety and Treatment Program while actively challenging the Division's Order of Revocation.

5.2. Initial Assessment. -- The first phase of the program consists of an enrollment session and a period of assessment, conducted by 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 Alcohol 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, as well as financial, medical, recreational, emotional, legal and substance abuse problems;

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 services as established in the program standards.

5.3. Level 1. Prevention and Education Component. -- A 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 shall include the following:

5.3.a. Defensive Driving Instruction or other safety driving instruction;

5.3.b. Alcohol and/or 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 responsible for the costs of any additional prevention and education activities.

5.4. Level II, Intervention and Treatment Component. -- 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 to Level II of the Program. This level consists of individual or group outpatient counseling on a frequency corresponding to the determined need. Each Level II participant shall complete a Level I, Prevention and Education program.

5.5. Level III, Intensive Care Component. -- 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 to Level III. A 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 designed specifically for substance abuse treatment. The participant shall also as part of Level III, complete Level I, Prevention and Education Component and Level II, Intervention Treatment Component.

§91-15-6. Staff Qualifications.

6.1. Provider Responsibilities. -- Each provider is responsible for ensuring that the services provided through the program are delivered by competent and qualified professionals who meet the requirements established in the program standards published by the Division. Each provider shall provide the Division with the names, training and job functions performed by 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, education, or treatment.

6.4. Defensive Driving or other safety driving instruction. -- 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 provider shall designate a DUI Program Coordinator whose function is to supervise the performance of the terms of the contract between the provider and the Division. The program coordinator shall also work with the Division 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.

§91-15-7. 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 rule, the provider shall make a referral evaluation report on each participant on the form prescribed by the Division. The provider shall forward a copy of each report to the Division within thirty day from the initial assessment.

7.2. Change in Status. -- 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 provider changes a participant's status, it shall notify the Division by submitting a revised referral evaluation report.

7.3. Status Evaluation Report. -- The provider shall submit a Status Evaluation Report for each participant to the Division, on the prescribed form, upon completion of the Program.

7.3.a. If, subsequent to receipt of notification of completion of the Program, the Division finds during review of any participant's Interlock data that the participant continues to exhibit signs of abuse through frequent or significant Blood Alcohol Content (BAC) readings, the Division shall inform the provider who shall then void the notification of completion. The Division shall notify the participant that he or she must return to the Provider for re-evaluation and possible further services.

7.4. Appeal of Referral. -- Each Provider shall establish procedures for resolving Participant questions concerning referral level and status evaluation.

§91-15-8. 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 component as described in Subsection 5.3 of this rule, or other basic services as described in Subsection 5.2.d. The Participant shall pay the fee upon enrollment with the 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 rule, or other basic services as described in Subsection 5.2.d., is the responsibility of the participant. Each provider shall charge for additional services in accordance with its prevailing fee schedule for comparable services.

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:

8.3.a. Participant must have household family income equal to or below one hundred percent of the federal poverty standard, making adjustments for family size.

8.3.b. Participant must 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 Division of Motor Vehicles Driver Rehab 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. The provider shall remit to the Division the sum of \$125.00 and the provider shall retain \$275.00. The Division shall deposit \$75.00 of this sum in the Driver Rehab Fund, to be used to reimburse providers for their portion of the enrollment fee for persons qualifying for indigent status. The remaining \$50.00 shall be used by the Division for the administration of the Program. The Division is also responsible for collecting the one \$125.00 per participant from individuals that, upon approval, participate in an Alcohol/Drug Education Program in another state.

§91-15-9. 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 education, counseling, and treatment, receive a favorable Status Evaluation Report and pay all applicable costs for program participation.

9.2. Payment of Reinstatement Fees. -- A Program participant shall satisfy all financial obligations to the Division of Motor Vehicles before the reinstatement of his or her license will be considered.

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.