



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

4/29/2020 11:35:59 AM

Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Health And Human Resources

TITLE-SERIES: 69-15

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: Recovery Residence Certification and
Accreditation Program

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

16-59-2(g)

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR
FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME
LIMIT ESTABLISHED THEREIN:

PRIMARY CONTACT:

NAME: April Robertson

ADDRESS: One Davis Square Suite 100

Charleston, WV 25301

EMAIL: april.l.robertson@wv.gov

PHONE NUMBER: 304-558-9149

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE
SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND
CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

W. Va. Code 16-59-1 et seq. creates the program of voluntary certification of recovery residences. As originally passed during the 2019 session, there was a problem with the rule-making provision. That was fixed during the 2019 First Extraordinary session, but the agency did not have adequate time to research, consult with stakeholders, and draft an appropriate rule by the filing deadlines for the 2020 rule-making cycle. The agency is now proposing to file 69-15 as an emergency rule to prevent substantial harm to the public interest in accordance with W. Va. Code 29A-3-15(f). This will enable the program to be implemented without further delay.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

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

n/a

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

Yes

April L Robertson--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 69
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 15
RECOVERY RESIDENCE CERTIFICATION AND ACCREDITATION PROGRAM

§69-15-1. General.

1.1. Scope. – This rule establishes criteria for recovery residence certification, revocation, and reinstatement; appointment of the certifying agency; monitoring of the certifying agency and evaluation of the accreditation program; and a grievance procedure for recovery residents. The purpose of this rule is to safeguard the rights and well-being of recovery residents by requiring certain standards for voluntary recovery residence certification and a clear process for resident grievances.

1.2. Authority. – W. Va. Code §16-59-2(g).

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 five years from its effective date.

§69-15-2. Definitions.

2.1. “Act” means the provisions of W. Va. Code §16-59-1, et seq.

2.2. “Certificate of Compliance” means a certificate that is issued to a recovery residence by the department’s appointed certifying agency.

2.3. “Certified Recovery Residence” means a recovery residence that holds a valid certificate of compliance.

2.4. “Department” means the West Virginia Department of Health and Human Resources.

2.5. “Recovery Residence” means a single-family, drug-free, alcohol-free residential dwelling unit, or other form of group housing, that is offered or advertised by any person or entity as a residence that provides a drug-free and alcohol-free living environment of the purposed of promoting sustained, long-term recovery from substance use disorder. Recovery residences shall be certified pursuant to National Alliance for Recovery Residences (NARR) standards or chartered pursuant to Oxford House standards.

2.6. “Bureau” means the Bureau for Behavioral Health within the West Virginia Department of Health and Human Resources.

2.7. “Drug-free” means that residents shall not use or possess illicit drugs or prescription drugs not prescribed to them. It does not mean a person’s over the counter or prescription medication, including psychotropic medication, Naloxone, and medication-assisted treatment (MAT).

2.8. “Medication-Assisted Treatment” or “MAT” means the use of FDA-approved medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

2.9. “Substance Use Disorder” or “SUD” means the recurrent use of alcohol or drugs that causes clinically significant impairment, including health problems, disability, and failure to meet major responsibilities at work, school, or home.

2.10. “Supportive Services” are services provided to recovery residents by recovery residence staff or licensed professionals that include, but are not limited to, the following:

2.10.1. Vocational services;

2.10.2. Peer support;

2.10.3. Skills training;

2.10.4. Housing support; or

2.10.5. Community resource referral.

§69-15-3. Appointment and Monitoring of the Certifying Agency.

3.1. The Bureau shall appoint at least one certifying agency to administer the recovery residence accreditation program for drug-free and alcohol-free recovery residences as follows:

3.1.1. The appointed certifying agency shall be an affiliate of NARR, Oxford House, or a similar national entity;

3.1.2. The appointment shall last up to two years and may be renewed based upon satisfactory accreditation program performance; and

3.1.3. Either the Bureau or the appointed certifying agency may request termination of the appointment with at least 120 days’ notice. Termination may take place with less than 120 days’ notice in emergency circumstances, such as dissolution of the appointed certifying agency.

3.2. The Bureau shall monitor the appointed certifying agency as follows:

3.2.1. Review the certifying agency’s certification procedures;

3.2.2. Review documentation of each certified recovery residence’s compliance with NARR or Oxford House standards and those in section four of this rule;

3.2.3. Perform select site visits with the appointed certifying agency;

3.2.4. Have a Bureau employee serve as a non-voting *ex officio* member of the appointed certifying agency’s board of directors;

3.2.5. Receive appeals by recovery residences of certificate revocation by the appointed certifying agency, as described in section five of this rule; and

3.2.6. Receive appeals by recovery residents of their grievances against recovery residences to the appointed certified agency, as described in section six of this rule.

§69-15-4. Minimum Standards for Recovery Residence Certification.

4.1. The appointed certifying agency shall establish and implement an accreditation program for drug-free and alcohol-free recovery residences in accord with W. Va. Code §§16-59-1, et seq., that includes the following:

4.1.1. Application, certification, recertification, revocation, and reinstatement processes;

4.1.2. Monitoring and inspection of each recovery residence and its staff to ensure compliance with certification requirements;

4.1.3. Interviews of residents, employees, and volunteer staff on their knowledge and application of certification requirements; and

4.1.4. Orientation and ongoing training for certified recovery residence owners and staff.

4.2. Documentation required in the certification process includes, but is not limited to, the following:

4.2.1. A policies and procedures manual containing job descriptions for all staff positions;

4.2.2. Drug testing procedures and requirements;

4.2.3. Prohibition against alcohol, illicit drugs, or the use of prescribed medications by an individual other than the individual for whom the medication is prescribed;

4.2.4. Policies to support residents' recovery efforts, including supportive services provided;

4.2.5. A good neighbor policy to address neighborhood concerns and complaints;

4.2.6. Rules for residents;

4.2.7. Copies of all forms provided to residents;

4.2.8. Intake procedures;

4.2.9. Sexual predator and sexual offender registry compliance policy;

4.2.10. Relapse policy;

4.2.11. Fee schedule;

4.2.12. Refund policy;

4.2.13. Termination of residency procedures and policy;

4.2.14. Code of ethics;

4.2.15. Proof of insurance;

4.2.16. Proof and implementation of a background screening policy for residence workers;

4.2.17. Proof of satisfactory local, county, and state fire, safety, and health inspections; and

4.2.18. Copies of grievances filed by residents in the past year and documentation of their status.

4.3. To receive a certificate of compliance, a recovery residence must meet or exceed the current National Alliance for Recovery Residences (NARR) Standards or Oxford House Standards, as well as additional requirements in the Act.

4.4. A certificate of compliance should specify the following:

4.4.1. Name of the recovery residence;

4.4.2. Business name of the organization or entity that owns and operates the recovery residence;

4.4.3. Number of beds permitted under the certificate;

4.4.4. Gender designation of the beds;

4.4.5. Address of the recovery residence;

4.4.6. Type of certification (i.e., initial or renewal);

4.4.7. Level of recovery support provided;

4.4.8. Duration of the certificate of compliance;

4.4.9. Date of issue; and

4.4.10. Certificate number.

4.5. Certified recovery residences must apply for recertification every two years.

4.6. The appointed certifying agency shall update a list of certified recovery residences at least quarterly, post the list on its website, and share the list with the Department, Bureau, certifying agency's board of directors, and other stakeholders. The list shall include each certified recovery residence's certificate of compliance specifications, mailing address, phone number, contact person, and website (if available).

§69-15-5. Procedure for Revocation and Reinstatement of Recovery Residence Certification.

5.1. The appointed certifying agency may revoke a recovery residence's certificate of compliance for the following reasons:

5.1.1. The recovery residence administrator provides false or misleading information to the appointed certifying agency at any time;

5.1.2. Monitoring or inspection shows the recovery residence is in violation of a NARR standard, an Oxford House standard, the Act, or other requirements of the appointed certifying agency;

5.1.3. The recovery residence fails to cooperate with the Department, Bureau, or certifying agency investigation of a complaint; or

5.1.4. Resident complaints or grievances indicate safety concerns, discrimination, abuse, or other practices detrimental to the well-being of residents.

5.2. The appointed certifying agency shall send written notice to the recovery residence of revocation certificate of compliance. The written notice shall include the following:

5.2.1. Effective date of the revocation;

5.2.2. The basis for revocation of the certificate of compliance;

5.2.3. The locations to which the revocation applies;

5.2.4. Remedial measures the recovery residence may take, if any, for the appointed certifying agency to consider reinstatement of the certificate of compliance; and

5.2.5. Steps to request reconsideration or appeal of the decision of the appointed certifying agency.

5.3. Upon receiving a request for reconsideration, the appointed certifying agency shall reinstate the certificate of compliance or deny the request for reinstatement in writing within 30 days. This written notice shall include the following:

5.3.1. Effective date of reinstatement of the certificate of compliance, if applicable;

5.3.2. Reasons for denial of the request for reconsideration, if applicable; and

5.3.3. The option of the recovery residence to appeal the denial to the Board of Review of the Department's Office of Inspector General, pursuant to W. Va. Code §9-2-6(13), within 60 days of the denial notice.

5.4. The appointed certifying agency and recovery residence shall work together to address the needs of residents affected by a revocation of the recovery residence's certificate of compliance.

§69-15-6. Residents' Rights.

6.1. Each recovery residence shall establish and adhere to a written policy, consistent with this rule series, regarding the rights and responsibilities of residents, which shall be explained to residents at the time of admission. Receipt of the rights by the resident shall be indicated by a signature and date by the resident on a line for that purpose on the admission agreement.

6.2. The rights and responsibilities of residents shall be posted prominently in the recovery residence. These rights shall include the following:

6.2.1. Every resident shall be treated with consideration, respect and full recognition of the resident's dignity, individuality, and privacy;

6.2.2. A residence may not ask a resident to waive the resident's rights. A resident has the right to exercise any rights without reprisal;

6.2.3. Residents may retain personal clothing and possessions as space permits, unless to do so would infringe on the rights of others, would create a danger to others, would create a security risk or would create a fire, health, or safety hazard;

6.2.4. Residences shall allow reasonable visiting hours based upon policy, which shall be posted in a prominent public place;

6.2.5. Residences shall have a policy about how residents send and receive personal mail;

6.2.6. Residents have the right to reasonable access to a telephone consistent with the certifying agency policies;

6.2.7. A resident may voice a complaint or file a grievance without interference, coercion, or reprisal;

6.2.8. Residents may manage their own personal finances, unless a representative payee or financial guardian has been appointed;

6.2.9. The resident's right to privacy extends to all records and personal information. Personal information about a resident shall not be discussed with anyone not directly involved in the resident's care, treatment, or supervision. Release of any record, excerpts from, or information contained in such records shall be subject to the resident's written approval, except as requested by representatives of the appointed certifying agency to carry out its responsibilities or as otherwise provided by law;

6.2.10. The resident has the right to review the resident's medical or financial records upon request. The resident has the right to provide written comments about the medical or financial record, and the comments shall be made part of the resident's record at the request of the resident;

6.2.11. Residents shall be free from mental, verbal or physical abuse, neglect, and exploitation. Residents shall also be free from seclusion or restraints. All residents have the right to be free from corporal punishment. All residents have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Psychoactive drugs shall not be administered involuntarily;

6.2.12. The residence shall not manage a resident's finances;

6.2.13. Residents notified about a pending discharge from the residence, absent an emergency, shall be allowed to participate in the decision-making process of the residence concerning the selection of an alternative placement and receive adequate notice of a pending discharge;

6.2.14. Residents have the right to make informed decisions to reasonably refuse care to the extent allowed by law. Except for residents who are prohibited from doing so by a court order, this right includes the right to discharge himself or herself from the residence;

6.2.15. If a resident has a chronic condition, he or she has the right to receive competent and compassionate medical assistance to manage the physical and emotional symptoms of that condition;

6.2.16. Residents have the right to have a family member or another person of the resident's choice be notified of the admission to the residence. Residents also have the right to decline to have anyone notified of the admission. A facility may not disclose information about a resident's admission without obtaining the resident's authorization. The decision by the resident regarding notice shall be documented at the time of admission to the residence;

6.2.17. Residents have the right to vote in public elections;

6.2.18. Residents with limited English proficiency have the right to have oral or written translation or interpretive services and cannot be required to pay for such services;

6.2.19. Residents have the right to have reasonable accommodations under the Americans with Disabilities Act; and

6.2.20. Residents have the right to receive services without unreasonable discrimination.

6.3 Each residence shall establish an accessible, written grievance procedure for resolving residents' concerns or complaints that is explained to residents at the time of admission and posted in a prominent, public place on each floor of the residence. The grievance procedure shall include at a minimum, time

frames, a process for responding to residents in writing within 10 days, and the next steps a resident may take if the complaint or grievance is not resolved to the resident's satisfaction at the recovery residence level.

6.3.1. The residence shall assist a resident with grievances and recommended changes in policies without fear of reprisal, interference, punishment, or discrimination.

§69-15-7. Administrative Due Process.

7.1. Before any certificate of compliance is denied, suspended, or revoked, written notice shall be given to the owner or owners of the recovery residence, stating the grounds of the denial, suspension, revocation, or penalty and the date set for any enforcement action.

7.1.1. The notice shall be sent by certified mail to the owner or owners at the owner's business address.

7.1.2. Within 30 days of receipt of the notice, the owner or owners may submit a request for an administrative hearing before the Department's Board of Review or an informal meeting with the Bureau to address and resolve the findings.

7.1.3. The recovery residence and its owner or owners shall be entitled to be represented by legal counsel at the informal meeting or at the hearing at their own expense.

7.1.4. All of the pertinent provisions of W. Va. Code §§29A-5-1, *et seq.*, and W. Va. Code R. §69-1-1, *et seq.*, shall apply to and govern any hearing authorized by this rule.

7.1.5. If an owner fails to request a hearing within the time frame specified, he or she shall be subject to the full penalty imposed.

7.1.6. The filing of a request for a hearing does not stay or supersede enforcement of the final decision or order of the Secretary. The Secretary may, upon good cause shown, stay such enforcement.

§69-15-8. Administrative Appeals and Judicial Review.

8.1. Any owner of recovery residence or resident who disagrees with the final administrative decision as a result of the hearing may, within 30 days after receiving notice of the decision, appeal the decision of the Circuit Court of Kanawha County or in the county where the petitioner resides or does business.

8.1.1. The filing of a petition for appeal does not stay or supersede enforcement of the final decision or order of the Secretary. An appellant may apply to the circuit court for a stay of or to supersede the final decision or order.

8.1.2. The Circuit Court may affirm, modify or reverse the final administrative decision. The owner or owners, or the Secretary may appeal the court's decision to the Supreme Court of Appeals.