

Title 69 Series 15

Department of Human Services
Bureau for Behavioral Health

Summary of the Amendments to the Rule:

The rule change is submitted to get the rule in line with the changes to the West Virginia Code contained in SB475. This includes changing the definitions, adding a process for recovery residence registration with OHFLAC, permitting the certifying agency to serve a notice of a deficiency that causes and “immediate jeopardy”, and other clean up and clarifying changes.

Comment 1:

On August 20, 2024, a comment was received that there was no mechanism for recovery residence operators to file grievances against the certifying agency and their only legal recourse is to go to court. This comment raises concerns that future directors of the certifying might “make decisions based on personal beliefs rather than established guidelines.”

Response:

The Bureau for Behavioral Health has reviewed the comment. Operators are free to contact the Department of Human Services (DoHS) with any issues they may have about the certifying agency. If the certifying agency is operating outside of established guidelines or policy, there may be recourse against it in its contract with DoHS. Therefore, no changes to the rule were made based upon this comment.

Comment 2:

On August 29, 2024, comments were received from the West Virginia Alliance of Recovery Residences. Many of the comments contained clarifying changes or questions related to time periods. Concerns were also raised about whether the registration process will dilute the certification process. Further, ideas were expressed about making the registration process and data collection different for certified recovery residences.

Response:

The Bureau for Behavioral Health has reviewed this comment. Some of the clarifying changes were made. Few comments could not be addressed because it would not align the rule with enabling statute.



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Fwd: Administrative Rule for WV SB 475

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To: Nicholas R Stuchell <nicholas.r.stuchell@wv.gov>

Fri, Aug 30, 2024 at 11:00 AM

From: **David Weiss** <dweiss@casewv.org>
Date: Tue, Aug 20, 2024 at 7:13 AM
Subject: Administrative Rule for WV SB 475
To: virginia.m.payne@wv.gov <virginia.m.payne@wv.gov>

Good morning. It has never been clearly established how grievances against the certifying agency can be placed, and how they will be handled. If I am reading this correctly, the only recourse operators of recovery residences have if a dispute arises is to go to court. It is unreasonable to assume that any present or future Director will not make decisions based on personal beliefs rather than established guidelines. This document speaks over and against the penalties against operators of recovery residences, but never addresses how any grievance against the certifying agency can be made, let alone remedied.

Comments on Admin Rule Draft for SB 475

- **2.8** – Should say “licensed or appropriately credentialed”
- **2.8.3.** – Probably should change to “Life Skills”
- **3.2** – Does this mean the department will review each residence's file? Are we required to submit those monthly/annually, or just share when asked?
- **4.4.** – change to “at least every two years;” we review annually, but are adding a 2-year certification as an incentive
- **5.3.** – maybe we can include the option to notify within a shorter timeframe (like 3 days?) looking for a middle ground between revoking immediately & onsite and/or after 30-day notice.
 - Finding placement within 5 days might be tough, depending on the number of residents and their unique needs
- **6.6.** – What does it mean when it says a new owner's application will be valid for 3 months? Why not 1 year? I'm not sure I understand this one.
- **6.14-6.16** – I think I understand the inclusion of these, but I'm confused about how it ties in with us and our certification process. I know it says that standards violations go to us, but the standards/ ethics apply to the entire operation. Will the department share their investigations and findings with us? I think this could be confusing for people making complaints, but also for operators, and for us in trying to navigate where organizations stand with us. It might make more sense if we refer complaints outside of our scope and complaints about uncertified residences to the department. My assumption is that these processes are necessary for the department to be able to take necessary action, but I would very much like to better understand how these two processes will overlap/work together.
- **6.19.2** – It says the revocation is issued by the Department but requires it to be sent by the Certifying agency.
- **8.3.2.** – I don't think giving residents 10 days to submit grievances is realistic. I do understand time restraints for formal investigations, but there's a lot of nuances to how/when complaints are filed that this could really restrict the complaint process in a detrimental way.
- **9.1.** – denial is crossed out in the 1st half of the sentence but still included in the 2nd half.

I do have some concern about whether this diminishes the need for certification/ our processes. For example, requiring an application and program agreement, etc., all the grievance and data collection. Maybe there could be some exemptions for our certified residences or they could report all that information to us? I do like that certified residences are given more time than non to become registered. I feel like this is going to create confusion and a lot could get lost in between the two agencies, as there seems to be a fair amount of replication to things we already do.

Additionally, I'm wondering why there's not a fiscal note included, as this seems to be a big ask for the department.