

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

Form #2

Do Not Mark In This Box
FILED
2010 JUN 30 PM 4: 06
OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Emergency Legislative Rule CITE AUTHORITY: W. Va. Code 17A-2-9 and 17C-5A-3

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 98

TITLE OF RULE BEING PROPOSED: SAFETY AND TREATMENT PROGRAM

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 30, 2010 AT 10:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Craig Richards

350 Capitol Street, Room 350
Charleston, West Virginia 25301

craig.a.richards@wv.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Patsy A. Hardy
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 64CSR98 DHHR Safety and Treatment Program

Type of Rule: X Legislative Interpretive Procedural

Agency: Health and Human Resources

Address: 1900 Kanawha Blvd. East
Bldg. 3, Room 206
Charleston, WV 25305

Phone Number: (304) 558-1555 Email: Craig.A.Richards@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The proposed rule is a new rule to comply with the requirements of SB 186, passed in the 2010 legislative session. The bill created a special revenue account known as the Department of Health and Human Resources Safety and Treatment Fund and found that an emergency exists and required the Secretary to file an emergency rule to implement section 3 of article 5A, chapter 17C, of the West Virginia Code. That section of Code concerns the administration of a safety and treatment program for persons whose licenses have been revoked under the provisions of article 5A of Chapter 17C of the West Virginia Code or section seven, article five of chapter 17C of the West Virginia Code or subsection (6), section five, article three, chapter seventeen-b of the West Virginia Code.

The bill will cost the Department approximately \$202,145 in the first year and \$194,645 in subsequent years over and above the expected revenue generated by the program annually. (Some of this cost may be offset by the transfer of funds from the DMV to the DHHR.) This cost can be recovered by increasing DUI fees (as allowed by §17C-5A-3 of the State Code). At present, the estimate is for approximately 6,000 individuals to apply to the program in FY2011 resulting in a revenue of approximately \$180,000. The trend is showing that the number of applicants to the program increases by approximately 250 annually.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2010 Increase/Decrease (use "-")	2011 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	202,145	194,645
Personal Services		148,145	148,145
Current Expenses		46,500	46,500
Repairs and Alterations			
Equipment		7,500	
Other			
2. Estimated Total Revenues		180,000	187,500

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The total (first year) cost to the Bureau for Behavioral Health and Health Facilities of \$202,145 is based upon the following: Personal services costs totaling \$94,445 are broken down as follows: 1 HHR Specialist Sr. at \$37,000, 1 HHR Specialist at \$31,720, and 1 Office Assistant III at \$25,725 for a total of \$94,445.

Benefits totaling \$53,700 are broken down as follows: admin. fees and health insurance - \$23,502 (\$7,834/FTE * 3 FTE), FICA and PERS - \$23,281 (24.65% of personal services), Workers Compensation - \$1,889 (2.00% of personal services) and OPEB - Current expenses totaling \$46,500 are broken down as follows: \$32,500 to implement a monitoring protocol to assure fidelity of DUI programs throughout the state (includes travel, lodging, meals, and honorarium for Peer Reviewers); \$7,500 for travel for the Program Director/Coordinator (to attend meetings with providers both in-state and out-of-state); \$1,500 for travel and training for one Office Assistant; and, \$5,000 for travel and other expenses for DUI providers for planning and training (minimum of semi-annual meetings).

Equipment costs (for the first year) totaling \$7,500 are broken down as follows: computers, phones, etc. for an HHR Specialist Sr., an HHR Specialist and one staff.

Revenues of \$180,000 in FY2011 are based on an average program enrollment of 6,000 individuals at a fee of \$30 per person. Increased revenues in FY2012 reflect the increase in applications of approximately 250 per year.

Deficits of \$22,145 and \$7,145 are projected for FY2011 and FY2012 respectively if fees are not increased.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

[Empty box for memorandum content]

Date

Agency

Authorized Representative

Department of Health and Human Resources

Patsy A. Hardy

Patsy A. Hardy
Cabinet Secretary

Legislative Rule, 64CSR98
Safety and Treatment Program
Department of Health and Human Resources
Bureau for Behavioral Health and Health Facilities

BRIEF SUMMARY

The proposed rule is a new rule to comply with the requirements of SB 186, passed in the 2010 legislative session. The bill created a special revenue account known as the Department of Health and Human Resources Safety and Treatment Fund and found that an emergency exists and required the Secretary to file an emergency rule to implement section 3 of article 5A, chapter 17C, of the West Virginia Code. That section of the Code concerns the administration of a safety and treatment program for persons whose licenses have been revoked under the provisions of article 5A of Chapter 17C of the West Virginia Code or section seven, article five of chapter 17C of the West Virginia Code or subsection (6), section five, article three, chapter seventeen-b of the West Virginia Code.

STATEMENT OF CIRCUMSTANCES

The West Virginia Legislature has required the Secretary of health and Human Resources to propose emergency rules by July 1, 2010, to administer the safety and treatment program and to provide for payment of fees for the program on behalf of indigent offenders.

□
RULE QUESTIONNAIRE

DATE: June 30, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Department of Health and Human Resources
350 Capitol Street, Room 350, Charleston, West Virginia 25301
304.558.6567

EMERGENCY RULE TITLE: SAFETY AND TREATMENT PROGRAM

1. Date of filing June 30, 2010

2. Statutory authority for promulgating emergency rule:
W. Va. Code section 17A-2-9 and 17C-5A-3

3. Date of filing of proposed legislative rule: June 30, 2010

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? This is a new rule with new language.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
~~The Safety and Treatment Program is an essential part of the state's effort to stop driving under the influence and related offenses. This rule provides for the administration of the program and the payment of fees on behalf of indigent offenders.~~

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

~~None~~

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~The West Virginia legislature in SB186 passed in the 2010 legislative session that an emergency exists and required the Secretary of the Department of Health and Human Resources to file an emergency rule.~~

FILED

2010 JUN 30 PM 4: 06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF MOTOR VEHICLES
SERIES 98
SAFETY AND TREATMENT PROGRAM**

§64-98-1. General.

1.1. Scope. -- These legislative rules establish a comprehensive safety and treatment program for persons found in initial and subsequent violation of Chapter 17C, Articles 5 and 5A of the Code.

1.2. Authority. -- W. Va. Code §§17A-2-9 and 17C-5A-3.

1.3. Filing Date. --

1.4. Effective Date. --

§64-98-2. Application and Enforcement.

2.1. Application - These legislative rules apply to persons involved in the Safety and Treatment Program administered by the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse pursuant to §17C-5A-3.

2.2. Enforcement - Enforcement of these legislative rules is vested with the Secretary of the Department of Health and Human Resources.

§64-98-3. Definitions.

The following definitions shall apply in the interpretation and enforcement of these legislative rules.

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.

3.2. Code - The Code of West Virginia of 1931, as amended.

3.3. Secretary - The executive officer of the Department of Health and Human Resources appointed by the Governor.

3.4. Department - The Department of Health and Human Resources.

3.5. License - Any permit issued by the Commissioner of the Department of Motor Vehicles for the purpose of operating a motor vehicle in this state.

3.6. Participant - A person enrolled in the Safety and Treatment Program.

3.7. Program - The Safety and Treatment Program established pursuant to §17C-5A-3.

3.8 Provider – An entity that provides Safety and Treatment Programs pursuant to a grant, an agreement or a Memorandum of Understanding with the Department.

3.8. Sliding Fee Scale - The scale of fees charged by the providers for services rendered over and above the basic Level I Program Safety and Treatment Program.

§64-98-4. Program Responsibilities.

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

4.2. Department of Health and Human Resources is responsible for establishing a comprehensive safety and treatment program for persons found in violation of Chapter 17C, Articles 5 and 5A of the Code. The Department fulfills 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 insuring that services rendered through the Program are delivered by competent and qualified professionals. The Department shall first approve any program curriculum used in the program.

4.3. Community Behavioral Health Centers and other providers - 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 - When notified of the Commissioner of Motor Vehicles' order of license revocation, persons are advised 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 for determining which Program levels are appropriate for each Participant to complete.

The assessment shall use:

(A) Objective information such as the Participant's blood alcohol content; various assessment tests such as the Michigan Alcoholism Screening Test (MAST), the Numerical Drinking Profile (NDP) and McAndrews Scale of the Minnesota Multiphasic Personality Inventory; and prior driving under the influence, public intoxication, and other substance abuse related arrests.

(B) Subjective information based on the Participant's problems involving family, employment, education/training, financial, medical, recreational, emotional, legal and substance abuse problems.

(C) Information on the Participant's interpersonal relationships, and his own observation of his present status; the evaluator's observations of the participant, and any other significant information that is available.

5.3. Level I, Prevention/Education Component - Participants who through the assessment phase are evaluated as not having a significant substance abuse problem are referred 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 hours and shall include the following:

(A) Defensive Driving Instruction.

(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.

(C) One individual counseling session after the classroom instruction.

This session shall be used to evaluate the Participant's need for further services. If it is determined in this counseling session that the participant has not benefited significantly or has demonstrated a lack of involvement, additional prevention/education activities may be required to fulfill the completion criteria for Level I.

5.4. Level II, Intervention/Treatment Component - Participants who are considered as having a potential, probable, early stage or middle stage substance abuse problem are referred to Level II of the Program. This level consists of individual or group outpatient counseling on a frequency correspondent to the determined need. Completion of the Level I, Prevention/Education program is required. Verified attendance at meetings of Alcoholics Anonymous, narcotics Anonymous or other similar entity may be required.

5.5. Level III, Intensive Care Component - Participants who are assessed as having a late stage substance abuse problem are referred to Level III. Participants at this level shall participate in an intensive treatment program which will have total abstinence as its goal. The intensive treatment component consists of residential treatment or partial hospitalization designed specifically for substance abuse treatment. Verified attendance at meetings of Alcoholics Anonymous, Narcotics Anonymous or other similar entity may also be required. Completion of Level I, Prevention/Education and Level II, Intervention Treatment Component for aftercare purposes is also required.

§64-98-6. Staff Qualifications.

6.1. Center Responsibilities - Each Center shall be responsible for ensuring that the services provided through the Program are delivered by competent and qualified professionals in the field of substance abuse. Each Center shall provide the Department with the names, training and function performed of all persons providing services for the Program.

6.2. Assessment, Evaluation and Treatment - Persons 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/Education - Persons providing services for the Prevention/ Education component of the program shall have at least one year of work experience in the field of substance abuse prevention/education and/or treatment or have attained the necessary skills through training, education, experience, and supervision.

6.4. Defensive Driving - Persons providing services for the course of defensive driving shall be qualified instructors.

6.5. Program Coordinator - Each Center shall designate a D.U.I. Program Coordinator whose function is to supervise the performance of the terms of the contract between the Center and the Department. The Program Coordinator shall also work with the Department for the purposes of program development and procedural refinement.

§64-98-7. Program Participant Evaluation.

7.1. Referral Evaluation Report - Based on the information gathered during the initial assessment as described in 5.2 of these legislative rules, a referral evaluation report is made by the Center on each Participant on the form prescribed by the Department. The Center shall forward each report to the Department.

7.2. Change in Status - The Centers have the authority to change a Participant's Program level status following the initial assessment. When a Center changes a Participant's status, it shall notify the Department by submitting a revised Referral Evaluation Report.

7.3. Status Evaluation Report - The Center shall submit a Status Evaluation Report on 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 quantity of treatment provided by the Center for any Participant rests with the Secretary.

7.5. Appeal Of Referral - Each Center shall establish procedures for resolving Participant questions concerning referral level and status evaluation.

§64-98-8. Fiscal Procedures.

8.1. Program Enrollment Fee - The fee for enrollment in the Program is established by the Secretary. This fee covers the provision of the Level I Prevention/Education treatment component as described in 5.3 of these legislative rules. Unless the participant is found to be indigent the fees shall be paid by the Participant upon enrollment at the Center.

8.2. Additional Services - The cost for all counseling and treatment services provided in addition to the Level I component as described in 5.3 of these legislative rules is the responsibility of the Participant. Each Center shall charge for such additional services in accordance with its prevailing fee schedule for comparable services. A sliding fee scale shall be used if it is determined that the Participant cannot afford the full fee for additional services.

8.3 Indigent Participant – Persons who are determined to be indigent may be eligible for a waiver of the fees or a reduction in the fees for participation the Program.

(1) All individuals with family income equal to or below one hundred percent of the federal poverty standard, adjusted for family size, shall be determined to be indigent qualifying the individual for sponsorship for the full amount of fees related to enrollment at any level and participation in Safety and Treatment programming which is not covered by private or public third-party sponsorship, and which is not eligible for a Community Behavioral Health Center's charity care funds;

(2) All individuals with family income between one hundred one and two hundred percent 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 Intervention, Treatment component and Intensive Treatment Component: Determination of indigence for purposes of treatment will be made by the Safety and Treatment provider in accordance with its policy for Charity Care.

8.4. Department of Health and Human Resources Safety and Treatment Fund - The enrollment fee collected from each Program Participant by the Center shall be forwarded to the Department for deposit in the Department of Health and Human Resources Safety and Treatment Fund. The Center shall be reimbursed for each Participant the Center has enrolled.

§64-98-9. Reinstatement of License.

9.1. Completion of Program - Successful completion of the Program is contingent on completion of the prescribed level or levels of treatment, a favorable Status Evaluation Report, and payment, as requested by the Center, of all applicable costs for program participation.

9.2 Payment of Reinstatement Fees - All financial obligations to the Department and the Division of Motor Vehicles must be satisfied before the reinstatement of a Program Participant's license will be considered.

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