

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

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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

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: DHHR Safety and Treatment Program

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Patsy A. Hardy
Authorized Signature

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 That section of Code concerns the administration of a safety and treatment program for persons whose licenses have been revoked under the provisions of article 5A of Chapter 17C of the West Virginia Code or section seven, article five of chapter 17C of the West Virginia Code or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

July 30, 2010

Agency

Department of Health and Human Resources

Authorized Representative

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.

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 30, 2010

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Craig Richards
350 Capitol Street, Room 350
Charleston, West Virginia 25301

craig.a.richards@wv.gov

304-558-5690
fax 304-558-2230

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

No public hearing was held.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

Mr. Craig Richards
350 Capitol Street, Room 350
Charleston WV 25301

Dear Mr. Richards:

The following are comments related to Proposed Emergency Legislative Rule Title 64, W.Va. Code 17A-2-8 and 17C-5A-3 Series Number 98, Safety and Treatment Program.

Unless something has changed over the years it is my understanding that it is a privilege to drive in West Virginia not a right. Individuals have a personal obligation to operate a vehicle in a sober and unimpaired manner. It is the individuals responsibility to experience the natural consequences of their inappropriate action. Clinically the experience of having to pay for the natural consequences of behavior is not only therapeutic but also a way of teaching personal responsibility. In a disease of denial it is critical for an individual to accept personal responsibility or else the state will become just another enabler. Why should the tax payers have to pay for personal irresponsibility?

It has been the experience of the Appalachian Community Health Center that individuals who are motivated and want their drivers license back, take the appropriate steps necessary to make full payment for their education and other required services. Saving for payment of all cost related to their offense including the education and treatment components is part of personal responsibility. If we expect personal responsibility in individual health decisions it should also be expected in Safety and Treatment Programs. The cost for education and most treatment is low enough to not cause an undue burden for participants. It is of note that the DMV never made provision for the state to subsidize the offender by paying cost and fines for the offender or re-offender.

As final general comments, it should be noted that paying fees for the DUI offender is enabling and sends a message that they can be financially bailed out of their consequences. What is the incentive not to re-offend.

The Center has many years of experience with this population both in education and treatment. The system works as it is currently operated. The credentials of staff and supervisors assures quality and consistency where the rules are applied as written. The major upgrade needed is the purchase of more current media for use in the classes including electronic multi media materials.

Specific Concerns and Comments:

64-98-3.1. The term Guilds is unnecessary. Behavioral Health Centers are Behavioral Health Centers.

64-98-6. 1-5. The qualification for staff and supervisors should be no less than currently required including the requirement of a Masters level CAC for the Program Coordinator to assure the clinical integrity of the program operation.

64-98-8-1. The individual was not so indigent that they could not operate a vehicle, pay Insurance and buy alcohol so I am not sure why they are to indigent to pay for their DUI Offense. Who will determine the actual level of indigence and how will that be assured by mandatory proof (i.e.. IRS 1040) or other proof of lack of disposable income.

64-98-8-2 . The provision of a sliding fee schedule for DUI presumes there is a sliding fee schedule for all consumers. Who will support the sliding fee schedule to pay for the difference between what all consumers pay and the actual cost of services if the scale is required. A payment schedule where the person agrees to pay and is placed on a payment plan makes more sense and encourages personal responsibility especially when the license will not be released until all requirements are met.

64-98-8-3. There are two 64-98-8-3's. With regard to the first, a waiver or reduction in fees is clinically counter indicated.

64-98-8-3. The second 64-98-8-3 The provision of indigent care using Charity Care will have to be clearly defined including how this will be audited (i.e.. NGS)

64-98-8-4. Where the funds are to be forwarded and how the payments will be received will need to be clearly established in writing.

64-98-9-1-5. Payment of Reinstatement fees required by DMV should rest fully in the hands of the offender. Payment for any Inter Lock requirements should be fully the responsibility of the offender. The question of payment to the Centers will need to be clarified as to when the offender is considered fully paid such as when the services are completed and billed or when the services are completed and the Center has been reimbursed for the participant (offender).

If you have any questions regarding this communication, please do not hesitate to contact me.

Sincerely;

Richard Kiley, PhD
Executive Director.

Disposition of Comments made by Richard Kiley

General objections to payment of fees for indigent offenders. W.Va. Code section 17C-5A-3 requires payment of fees for indigent offenders. No amendment to the rule is made in response to this comment.

Objection to term Guilds. The rule is amended to delete the term "and Guilds".

Staff qualifications. Staff qualifications are unchanged from the existing provisions. No demonstration of a need to change the qualifications has been made. No amendment to the rule is made in response to this comment.

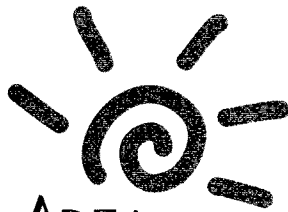
Objections to waiver of fees and sliding scale. W.Va. Code section 17C-5A-3 requires payment of fees for indigent offenders. No amendment to the rule is made in response to this comment.

Section 8 has been amended to correct numbering of subsections.

Charity Care policy for treatment component. This section does not change existing policy by providers with respect to treatment using Charity Care. No amendment to the rule is made in response to this comment.

Procedures for handling funds. Under the existing program as it was administered by the Division of Motor Vehicles a method for handling funds was worked out. The rule adopts and builds on the established method of handling funds. No amendment to the rule is made in response to this comment.

Payment of reinstatement fees. No change to the current policy regarding payment of reinstatement fees is made. No amendment to the rule is made in response to this comment.



LOGAN MINGO AREA
MENTAL HEALTH

RECEIVED

JUL 13 2010

WV DHHR BHHF

Robert R. Mays, Jr., ~~FISCAL~~ Executive Director

Route 10, Three Mile Curve

P.O. Box 176

Logan, West Virginia 25601

Tel (304) 792.7130 • Fax (304) 792.7146

July 12, 2010

Mr. Craig Richards
350 Capitol Street
Room 350
Charleston, WV 25301

**RE: 64CSR98
DHHR Safety & Treatment Program**

Dear Mr. Richards:

Having been involved with the WV DUI Safety and Treatment Program since its inception both as a coordinator of a program and an instructor of the program, I have observed many changes. Initially, the program consisted of the initial assessment comprised of administering various instruments and gathering historical information to determine placement in one of three level of treatment or education.

Our facility has utilized the MAST, the MacAndrews and the Socrates to aid in the determination of placement. Those individuals who appeared to have no problematic issues were placed in Level I (Educational Component only). These assessments were administered and interpreted by persons with an extensive knowledge of substance abuse. The educational component focused on basic information relative to substance abuse but also focused on changing or modifying behavior to help insure there would be no subsequent arrests.

An eight-hour Defensive Driving Course was part of the original six-week, 18-hour educational component. It was, and is, my opinion that this course is not relevant whatsoever. The participants in our area have limited education and discussing "braking distances" and the "two second rule" matter little to an individual who is charged with driving under the influence.

Over the years, the educational component (Level I) has been modified several times and my belief is the educational component must focus on relevant information and requires "getting down" to where the participants can relate and feel comfortable.

Mr. Craig Richards
Page Two
July 12, 2010

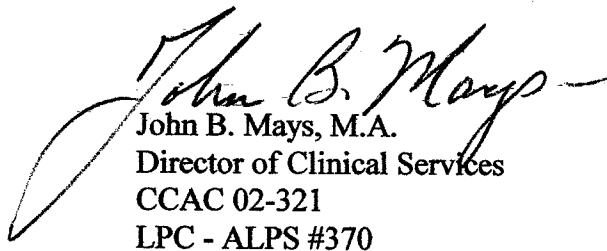
**RE: 64CSR98
DUI Safety & Treatment Program**

One hour devoted to AA/NA would be beneficial if a dependable individual would be available. Some of our local NA meetings are simply another area to exchange or sell illegal drugs.

It is my belief the assessments prior to participation, the actual teaching of the educational component and the treatment component should be completed by certified addictions specialists with a minimum of the CAC credential. The DUI Coordinator should be, in my opinion, a Clinical Certified Addictions Counselor.

“Watering down” the present program and the standards will, in my opinion, increase the number of individuals charged with DUI and leave our State with a substandard program.

Sincerely,



John B. Mays, M.A.
Director of Clinical Services
CCAC 02-321
LPC - ALPS #370

JBM:erm

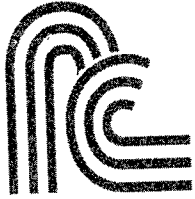
Disposition of Comments received from John B. Mays

Objection to defensive driving course. The agency believes that the defensive driving component is a valuable part of the safety and treatment program. No amendment to the rule is made in response to this comment.

Utility of AA/NA requirement. This comment suggests that attendance at an AA/NA meeting would be beneficial if a dependable individual were available and notes that some meetings are not beneficial. The contingent nature of the benefits precludes including it as a mandate in the rule at this time. The components of the program have been in place for years and the rule does not undertake to change the existing practice in this respect. No amendment to the rule is made in response to this comment.

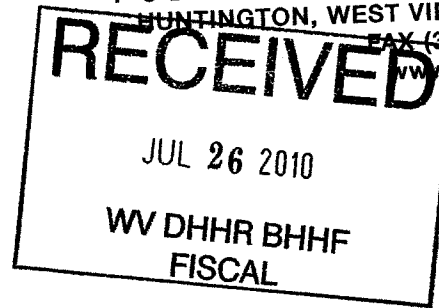
Use of certified addictions specialists with a minimum of the CAC credential and requiring the DUI Coordinator to be a Clinical Certified Addictions Counselor. The rule reflects existing practice to these qualifications and a need for change has not been demonstrated. No amendment to the rule is made in response to this comment.

Watering down the program and standards. The rule reflects existing practice and does not water down the program. No amendment to the rule is made in response to this comment.



Prestera Center FOR Mental Health Services INC

UNIVERSITY HEIGHTS • 3375 U S RT 60 E
P O BOX 8069 • PHONE (304) 525-7851
HUNTINGTON, WEST VIRGINIA 25705
FAX (304) 525-1504
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July 21, 2010

Mr. Craig Richards
350 Capitol Street
Room 350
Charleston, WV 25301

Dear Mr. Richards:

This is written in response to the draft 64CSR98. The current DUI Safety and Treatment Program has been shown to be one of the most comprehensive programs in the United States. The program has received high marks from the National Highway Safety Committee and Mothers Against Drunk Driving.

In the proposed rules, under staff qualifications, there is no indication of credentials other than work experience. The current Program Standards indicate "qualified instructors shall be able to document the provision of services under the supervision of a CCAC, CAC and/or CCS" and that each agency's DUI Coordinator "shall meet ALL criteria and maintain valid CCS or a valid CCAC or CAC with a minimum of 6 hours of continuing education specific to clinical supervision biannually." Certified addiction professionals have both the knowledge and experience to provide the highest quality of services to DUI offenders. Reducing these qualifications could be a step backwards.

Defensive driving has not been included in the educational curriculum for a number of years. These courses are available throughout the State at a nominal fee to participants. DUI is not a defensive driving issue. These individuals need education, intervention and treatment related to substance use in hazardous situations.

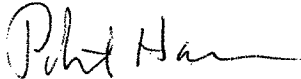
At this time, the initial program fee is the responsibility of the offender. The proposed rules indicate that "individuals which a family income below 100% of the federal poverty level" are eligible for sponsorship for the full amount of fees related to enrollment at any level and participation in the program and "individuals with a family income between 101% and 200% of the federal poverty standard will qualify for discounted fees related to enrollment." Allowing DUI offenders to use charity care funds to meet the requirements related to a criminal offense will have a strong negative impact on the Safety and Treatment Program. The majority of offenders report that two things have the most impact on their decision not to drink and drive - jail time and the financial cost. Individuals who pay for treatment are more invested in the process, participate more fully in sessions and leave services generally more satisfied than those who are not financially responsible. It is believed that should offenders not be responsible for payment of fees,

there will be a greater drop-out rate in the program resulting in a greater number of individuals not completing the program successfully and an increase in re-arrests for driving under the influence. In addition, using charity care funds to cover the cost of DUI enrollments will create a financial hardship on community behavioral health providers whose budgets are already stretched to the limit.

Impaired driving is a public safety and a health issue. The law has been changed resulting in reduced jail time and criminal consequences. The proposed rule further waters down the program. While the majority of the States are looking at ways to increase and enhance penalties for impaired driving, these proposed rules suggest modifying the West Virginia DUI Safety and Treatment Program into an inferior product.

Should you have questions, please do not hesitate to contact us.

Sincerely,



Robert Hansen
Executive Director



Susan Coyer
DUI Coordinator

Disposition of comments received from Robert Hansen.

Staff qualifications. The rule reflects current practice and no need for change to that practice has been demonstrated. No amendment to the rule is made in response to this comment.

Defensive driving. The agency believes defensive driving is an important component of the safety and treatment program. No amendment to the rule is made in response to this comment.

Payment of fees for indigent offenders. West Virginia Code section 17C-5A-3 requires payment of fees for indigent offenders. No amendment to the rule is made in response to this comment.



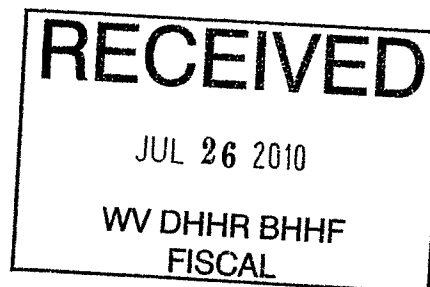
**Potomac
Highlands
Guild, Inc.**

Comprehensive Behavioral Health Care Provider

6 Park Street, PO Box 1119, Petersburg, WV 26847
Phone: 304-257-4687 Fax: 257-1945

July 20, 2010

Mr. Craig Richards
350 Capitol Street
Room 350
Charleston, WV 25301



RE: DUI Safety and Treatment Program

Dear Mr. Richards:

Potomac Highlands Guild has been involved with the Safety and Treatment program for many years. I have been involved for 24 years and during this time have seen many positive changes to enhance the program.. In fact there has been committee meetings to address staff qualifications, curriculum development and the treatment component...

The committee spent a lot of time on staff qualifications and development that would enhance the quality and professionalism of the program. The committee also reviewed and made other recommendations that was sent to Mr. Gary Koontz. I realize he is no longer a part of the program, but the committee recommendations can be a starting point for current discussion about the program.

I am enclosing a copy of the recommendations for your review. I feel it would be of benefit if we were able to further address the concerns about the standards of the program in future DUI meetings.

Michael Landis

Assistant Executive Director

P.O. Box 412
Franklin, WV 26807
Phone: 304-358-2351
Fax: 304-358-3671

P.O. Box 128
Keyser, WV 26726
Phone: 304-788-2241
Fax: 304-788-4022

P.O. Box 1583
Romney, WV 26757
Phone: 304-822-3897
Fax: 304-822-3731

227 Railroad Street
Moorefield, WV 26836
Phone: 304-538-2790
Fax: 304-257-1945

6 Park Street
PO Box 1119
Petersburg, WV 26847
Phone: 304-257-1155

TITLE 91
LEGISLATIVE RULE
DEPARTMENT OF MOTOR VEHICLES

SERIES 15
SAFETY AND TREATMENT PROGRAM

§91-15-1. General.

[REDACTED]

§91-15-2. Application and Enforcement.

- 2.1. Application - These legislative rules apply to persons involved in the Safety and Treatment Program administered by the Department of Motor Vehicles pursuant to [REDACTED]
- 2.2. Enforcement - Enforcement of these legislative rules is vested with the Commissioner of Motor Vehicles or lawful designee.

§91-15-3. Definitions.

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

3.1. Centers - Means the Community Behavioral Health Centers, and Guilds and Private Practitioners regulated by the Department of Health and contracted by the Department of Motor Vehicles contracted by DHHR as the provider agency for services relating to the Safety and Treatment Program.

[REDACTED]

- 3.3. Commissioner - Means the executive officer of the Department of Motor Vehicles appointed by the Governor pursuant to §17A-2-2, or lawful designee.
- 3.4. Department - Means the Department of Motor Vehicles-Department of Health and Human Resources.
- 3.5. License - Means any permit issued by the Commissioner for the purpose of operating a motor vehicle in this state.
- 3.6. Participants - Means persons enrolled in the Safety and Treatment Program.
- 3.7. Program - Means the Safety and Treatment Program established pursuant to §17C-5A-3.

3.8. ~~Sliding Fee Scale~~ - Means the scale of fees charged by the Centers for services rendered over and above the basic Level I Program, which insures that no person will be denied such services because of an inability to pay.

[91-15-4. Program Responsibilities.

4.1. ~~Department of Motor Vehicles~~ - DHHR - 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 in cooperation with the ~~Department of Health and contracting with the Community Behavioral Health Centers~~ Centers to conduct the Program. The Department is also responsible for insuring that services rendered through the Program are delivered by competent and qualified professionals.

4.2. ~~Department of Health~~ DHHR - Serves in an advisory capacity to both the ~~Department and the Centers~~ regarding policy resolutions and modifications pertaining to the operation of the Program. ~~The Department of Health~~ DHHR also monitors compliance with established policies and procedures by the Centers conducting the Program.

4.3. ~~Community Behavioral Health Centers and Guilds Centers~~ - Offer and operate the Program under contract with the ~~Department in consultation with the Department of Health~~ DHHR.

[91-15-5. Program Levels of Referral.

5.1. Initial Notification - When notified of the Commissioner's 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 utilize:

(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 drug related arrests.

(B) Subjective information based on the Participant's problems involving family, employment, education/training, financial, medical, recreational, emotional, legal, and alcohol and other drug 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 problem with the use of alcohol and other drugs are referred to Level I. This phase 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 operating a motor vehicle. The Level I component shall consist of a minimum of nineteen hours and shall include the following:

~~(A) Defensive Driving Instruction.~~ (A) 18 hours of education

~~(B) Alcohol and Other Drug Abuse Education of which at least one hour shall be an orientation to Alcoholics Anonymous provided by a member of Alcoholics Anonymous.~~

~~(C) (B) One individual counseling session after the classroom instruction.~~ Clinical exit interview after the 18 hours of education.

This session shall be used to evaluate the Participant's need for further services. If it is determined in this counseling exit interview 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 problem with the abuse of alcohol or other drugs are referred to Level II. This component shall consist of individual or group outpatient counseling on a frequency correspondent to the determined need and completion of the Level I, Prevention and the Education component. Verified attendance at meetings of Alcoholics Anonymous may be required.

5.5. Level III, Intensive Care Component - Participants who are assessed as having a late stage alcohol or other drug 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 shall consist of residential treatment or partial hospitalization designed specifically for substance abuse treatment. Verified attendance at meetings of Alcoholics Anonymous may also be required. Completion of Level I, Prevention/Education and Level II, Intervention/Treatment Component for aftercare purposes is also required.

[91-15-6. Staff Qualifications. -

6.1. Center Responsibilities - Each Center shall be responsible for insuring 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.~~ Staff providing services within the Enrollment/Evaluation/Assessment Session, the Reassessment Session

and the Intervention/Treatment Component shall be under the supervision of the DUI Coordinator and have the following qualifications:

1. Is a CIS according to the WV Certification Board, **OR**
2. Is a West Virginia CCAC/CAC or reciprocal addiction credential, **OR**
3. Master's Level degree in the human services field from an accredited college or university

~~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.~~

Persons providing DUI Education instruction shall have:

1. Certification as a West Virginia or reciprocal CAC or CCAC in West Virginia, **OR**
 - a. The individual has at least qualified at the West Virginia Counselor In Service (CIS) level **OR**
 - b. The individual has completed the work experience and educational experience required for a West Virginia or reciprocal CAC or CCAC, **OR**
2. Graduation from an accredited four year college or university (BA, BS, or the equivalent) in a human service field, and complete a minimum of 12 hours of in-service training or continuing education each year in DUI and or alcohol/drug related education/treatment areas. **OR**
 - a. A minimum of thirty (30) hours of college semester course work in human services field as referenced above, with a minimum of two (2) years direct supervised work experience specific to alcohol/drug education, and/or addictions treatment experience under the direct supervision of a CAC, CCAC or CCS or reciprocal addiction credential and complete a minimum of 12 hours of in-service training or continuing education each year in DUI **OR**,
3. ~~That he or she~~ The individual is in recovery and has demonstrated competence through at least 3 years' experience providing the DUI curriculum ~~and~~ under the supervision of a CAC, CCAC or CCS or reciprocal addiction credential and complete a minimum of 12 hours of in-service training or continuing education each year in DUI ~~and~~ or alcohol/drug related education/treatment areas.

Instructors of the educational component shall:

1. Attend and observe a complete cycle of the sessions of a DMV-approved DUI Safety and Treatment Program. This training must be documented in the instructor's personnel record. Trainees must attend a complete cycle,

co-facilitate with a current, qualified instructor **OR**

2. Attend a DUI Safety and Treatment Program Training.

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

6.5.4. 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 both the Departments of Health and Motor Vehicles for the purposes of program development and procedural refinement

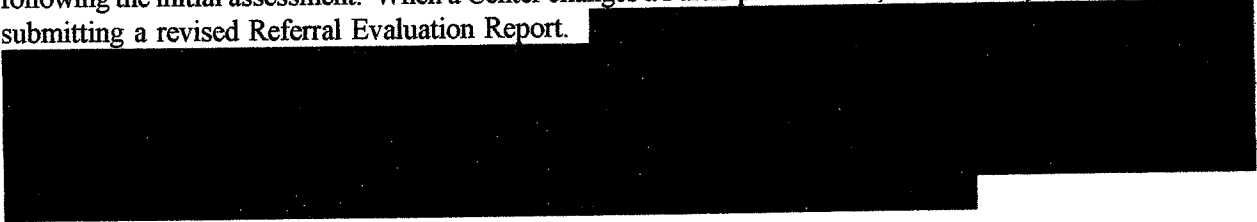
This individual shall meet ALL criteria and maintain valid CCS credential **OR**
Have a valid CCAC or CAC and 6 hours annual continuing education specific to Clinical Supervision.

The DUI Coordinator or qualified designated clinical staff person of EACH contracted DUI Safety and Treatment provider shall attend the DHHR DUI Coordinator meetings and at other times as requested by the State Coordinator. Failure to attend, shall be reviewed by the State Program Coordinator on an individual basis at the discretion of the State Program Coordinator. Absence from two consecutive meetings will result in the provider's contract being placed on provisional status. A third consecutive absence will result in the provider's contract being suspended.

[91-15-7. 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 Commissioner/Secretary.

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

91-15-8. Fiscal Procedures.

8.1. Program Enrollment Fee - The fee for enrollment in the Program is established by the Commissioner in cooperation with the ~~Department of Health~~.DHHR This fee covers the provision of the Level I Prevention/Education treatment component as described in 5.3 of these legislative rules. The fees shall be paid by the Participant upon enrollment at the Center. Payment shall be in the form of a postal money order, bank money order, or certified check made payable to the Driver's Rehabilitation Fund. [REDACTED]

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. [REDACTED]

8.3. [REDACTED]

91-15-9. 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 obligation to the Department 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.

Disposition of comments received from Michael Landis.

Definition of Secretary of DHHR. This is defined in the statute and needs no replication in the rule. Procedures for handling this program at DHHR are already underway without confusion regarding responsible contact persons. No amendment to the rule is made in response to this comment.

Staff Qualifications. The rule adopts existing practice with regard to staff qualifications and no demonstration of a need to change this practice was shown. No amendment to the rule is made in response to this comment.

Change in status. The rule adopts existing practice with regard to change to a program participant's status following the initial assessment. No demonstration of a need to change this practice was shown. No amendment to the rule is made in response to this comment.

Fiscal procedures. Fiscal procedures are sufficiently clear to operate the program. No specific recommendations for change were included in the comment. No amendment to the rule is made in response to this comment.

TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
SERIES 98
SAFETY AND TREATMENT PROGRAM

2010 JUL 30 PM 3: 59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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 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;

8.4 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.

8.5. 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.