

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**
Form #7

Do Not Mark In This Box
Filing Date

2011 JUN 30 PM 3:56

OFFICE OF THE SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: WVDHHR/Bureau for Behavioral Health and Health Facilities TITLE NUMBER: 64

CITE AUTHORITY: 17-2A-9 and 17-C-5A-3

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 98

TITLE OF RULE BEING AMENDED: Safety and Treatment Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Not applicable

TITLE OF RULE BEING PROPOSED: Not applicable

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This emergency rule amends a previously filed rule relating to the Safety and Treatment Program administered by the West Virginia Department of Health and Human Resources, Bureau for Behavioral Health and Health Facilities. The rule deals with safety and treatment programs required of individuals charged with driving under the influence. This emergency rule is required to correct technical errors in 64CSR98, Safety and Treatment Program, authorized by the West Virginia Legislature and cited in SB 295 that passed on March 18, 2011. Failure to enact the emergency rule would create an emergency in that persons eligible for and needing the safety and treatment programs may not be able to access them.

Use additional sheets if necessary



Authorized Signature



EMERGENCY RULE QUESTIONNAIRE

DATE: June 30, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Michael J. Lewis, M.D., Ph.D, Secretary

West Virginia Department of Health and Human Resources
Suite 100, One Davis Square
Charleston, WV 25301

EMERGENCY RULE TITLE: Safety and Treatment Program

1. Date of filing June 30, 2011

2. Statutory authority for promulgating emergency rule:

17-2A-9 and 17-C-5A-3

3. Date of filing of proposed legislative rule: June 30, 2011

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? The emergency rule amends a current legislative rule.

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 emergency rule is necessary for the immediate preservation of public health and safety in that if it is not filed persons eligible for and needing the safety and treatment programs offered by the West Virginia Department of Health and Human Resources through its contractual relationships may not be able to access those programs.~~

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.

~~Not applicable.~~

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

~~Failure to access safety and treatment programs may increase the number of individuals in the state needing substance abuse treatment and being unable to access that treatment. Instantly, inability to access the programs will prevent persons who have been charged with driving under the influence and lost their drivers' licenses because of those charges from being able to regain their licenses by receiving the treatment required.~~

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.

This fiscal note may be subject to revision during the comment period.

Date

Agency

Authorized Representative

30-Jun-11

Department of Health and Human Resources



Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

FILED

2011 JUN 30 PM 3: 56

TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

COLLEEN C. BERNARD
SECRETARY OF STATE

SERIES 98
SAFETY AND TREATMENT
PROGRAM

§64-98-1. General

- 1.1. Scope. – This legislative rule establishes a comprehensive safety and treatment program for persons found in initial and subsequent violation of W. Va. Code §17C-5-1 *et seq.* and §17C-5A-1 *et seq.*
- 1.2. Authority. – W. Va. Code §§ 17A-2-9 and 17C-5A-3.
- 1.3. Filing Date. –
- 1.4. Effective Date.

§64-98-2. General.

- 2.1. Application – This legislative rule applies 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 this legislative rule is vested with the Secretary of the Department of Health and Human Resources.

§64-98-3. Definitions.

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

- 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 agencies 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. DUI – Any act which would constitute a violation of §17C-5-2.
- 3.6. License – Any permit issued by the Commissioner of the Department of Motor Vehicles for the purpose of operating a motor vehicle in this state.
- 3.7. Participant – A person enrolled in the Safety and Treatment Program.

- 3.8. Program – The Safety and Treatment Program established pursuant to §17C-5A-3.
- 3.9. Provider – An entity that provides Safety and Treatment Programs pursuant to a grant, an agreement or a Memorandum of Understanding with the Department.
- 3.10. Sliding Fee Scale – The scale of fees charged by the providers for services rendered over and above the basic Level 1 Program Safety and Treatment Program.

§64-98-4. Program Responsibilities.

- 4.1. The Department of Motor Vehicles is responsible for licensure to operate a motor vehicle and any changes to licensure.
- 4.2. ~~The Department of Health and Human Resources~~ is responsible for establishing a comprehensive safety and treatment program for persons found in violation of W. Va. Code §17C-5-1 *et seq.* and §17C-5A-1 *et seq.* The Department shall fulfill 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 ensuring that services rendered through the Program are delivered by competent and qualified professionals. The Department is also responsible for the development of program standards for individuals involved in the service delivery, for approval of program curriculum and for monitoring of compliance by providers with the standards.
- 4.3. ~~Community Behavioral Health~~ Centers and other providers shall 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 a person is notified of the Commissioner of Motor Vehicles' order of license revocation, the person is 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, conducted by the Centers, for determining which Program levels are appropriate for each Participant to complete. The assessment shall use:
 - 5.2.a. Objective information such as the Participant's blood alcohol content; various assessment tests 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;
 - 5.2.b. Subjective information based on the Participant's problems involving family, employment, education or training, financial, medical, recreational, emotional, legal and substance abuse problems; and
 - 5.2.c. Information on the participant's interpersonal relationships, and his or her own observation of his or her present status; the evaluator's observations of the Participant, and any other significant information that is available.
- 5.3. Level 1. Prevention and Education Component – The Center shall refer a Participant who through the assessment phase is evaluated as not having a significant substance abuse problem to Level 1. 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 1 component consists of a minimum of nineteen hours and shall include the following:

- 5.3.a. Defensive Driving Instruction or other safety driving instruction;
 - 5.3.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; and
 - 5.3.c. One individual counseling session after the classroom instruction.
 - 5.3.c.1. This session shall be used to evaluate the Participant's need for further services. If the counselor determines in the counseling session that the Participant has not benefited significantly or has demonstrated a lack of involvement, additional prevention and education activities may be required to fulfill the completion criteria for Level 1.
- 5.4. Level II, Intervention and Treatment Component – The Center shall refer a Participant who it considers as having a potential, probable, early stage or middle stage substance abuse problem to Level II of the Program. This level consists of individual or group outpatient counseling on a frequency correspondent to the determined need. The Participant shall Complete Level 1, Prevention and Education program. A Participant shall attend meetings of Alcoholics Anonymous, Narcotics Anonymous or other similar entity. Verification of attendance shall ~~also~~ be required.
- 5.5. Level III, Intensive Care Component – The Center shall refer a Participant who is assessed as having a late stage substance abuse problem to Level III. A Participant at this level shall participate in an intensive treatment program which will have total abstinence as its goal. The intensive treatment component consists of residential treatment or partial hospitalization designed specifically for substance abuse treatment. A Participant shall attend meetings of Alcoholics Anonymous, Narcotics Anonymous or other similar entity. Verification of attendance shall also be required. Completion of Level 1, Prevention and Education and Level II, Intervention Treatment Component for aftercare purposes is also required.

§64-98-6. Staff Qualifications.

- 6.1. Center Responsibilities – Each Center is responsible for ensuring that the services provided through the Program are delivered by competent and qualified professionals who meet requirements as established in the Program Standards published by the Department. Each Center shall provide the Department with the names, training and job functions performed of all persons providing services for the Program.
- 6.2. Assessment, Evaluation and Treatment – A person providing services for the Assessment, Evaluation, and Treatment aspects of the Program shall have at least one year work experience in the field of substance abuse treatment, or have attained the necessary skills through training, education, experience and supervision.
- 6.3. Prevention and Education – A person providing services for the Prevention and Education component of the program shall have at least one year of work experience in the field of substance abuse prevention and education and/or treatment or have attained the necessary skills through training, education, experience and supervision.
- 6.4. Defensive Driving – A person providing services for the course of defensive driving shall be a qualified instructor.

- 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. The Program Coordinator shall, at a minimum, be a Clinical Certified Addictions Counselor.

§64-98-7. Program Participant Evaluation.

- 7.1. Referral Evaluation Report – Based on the information gathered during the initial assessment as described in subsection 5.2 of this legislative rule, the Center shall make a referral evaluation report 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 may 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 and Level 1 Component Fee – The initial fee for enrollment in the Program shall be Four Hundred Dollars (~~\$400.00~~). This fee covers the provision of the Level 1 Prevention and Education treatment component as described in Subsection 5.3 of this legislative rule. The Participant shall pay the fee upon enrollment at the Center, unless he or she is found to be indigent.
- 8.2. Additional Services – The cost for all counseling and treatment services provided in addition to the Level 1 component as described in Subsection 5.3 of this legislative rule is the responsibility of the Participant. Each Center shall charge for additional services in accordance with its prevailing fee schedule for comparable services. If a Participant cannot afford the full fee for additional services a sliding fee scale shall be used.
- 8.3. Indigent Participant – A person who is determined to be indigent by the Center may be eligible for a waiver of the fees or a reduction in the fees for the participation in the Program.
 - 8.3.a. A person (or Participant) with family income equal to or below one hundred per cent of the federal poverty standard, adjusted for family size, shall be determined to be indigent, qualifying that person for sponsorship for the full amount of fees related to enrollment in the Level 1, Prevention and Education Component as set forth in 5.3 of this rule.
 - ~~8.3.b. A person (or Participant) with family income between one hundred and two hundred per cent 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. The Department of Health and Human Resources Safety and Treatment Fund –Upon enrollment in the Program, the Participant shall pay to the provider the sum of Four Hundred Dollars (~~\$400.00~~) except for those Participants ~~which~~ who are determined under 8.3 to be indigent. The provider shall remit to the Department the sum of ~~Two Hundred Twenty-Five Dollars (\$225.00)~~ One Hundred Twenty-Five Dollars, and the provider shall retain ~~One Hundred Seventy-Five Dollars (\$175.00)~~ Two Hundred and Seventy Five Dollars. ~~The Department shall deposit One Hundred Twenty-Five Dollars (\$125.00) of this sum in the Department of Health and Human Resources Safety and Treatment fund, to be used to reimburse providers for their portion of the Enrollment fee for persons qualifying for indigent status.~~

§64-98-9. Reinstatement of License.

- 9.1. Completion of Program – In order to successfully complete the program, the participant shall complete the prescribed level or levels of treatment, receive a favorable Status Evaluation Report and pay all applicable costs for program participation.
- 9.2. Payment of Reinstatement Fees – The Program Participant must satisfy all financial obligations to the Department and the Division of Motor Vehicles before the reinstatement of his or her license will be considered.
- 9.3. Final Decision – Subject to the provisions of §17C-5A-3(b)(2), the final decision on license Reinstatement is vested with the Commissioner of Motor Vehicles.