

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 372

BY SENATORS WALTERS, GAUNCH AND PALUMBO

[Introduced January 21, 2016;

Referred to the Committee on Health and Human
Resources; and then to the Committee Government
Organization.]

1 A BILL to amend and reenact §16-1-6 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §16-2-5 and §16-2-11 of said code, all relating to powers and duties
 3 of the Commissioner of Public Health; modifying administration of local boards of health;
 4 providing for regionalization of administration and services of local health departments;
 5 requiring local health departments to bill health insurance plans for services that are
 6 provided; mandating development of needle exchange programs in local health
 7 departments; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

1 That §16-1-6 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §16-2-5 and §16-2-11 of said code be amended and reenacted, all to read
 3 as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-6. Powers and duties of the commissioner.

1 The commissioner is the chief executive, administrative and fiscal officer of the Bureau for
 2 Public Health and has the following powers and duties:

3 (a) To supervise and direct the fiscal and administrative matters of the bureau, and in that
 4 regard and in accordance with law, employ, fix the compensation of and discharge all persons
 5 necessary for the proper execution of the public health laws of this state and the efficient and
 6 proper discharge of the duties imposed upon, and execution of powers vested in the
 7 commissioner by law and as directed by the secretary;

8 (b) To enforce all laws of this state concerning public health; to that end, the commissioner
 9 shall make, or cause to be made, investigations and inquiries respecting the cause of disease,
 10 especially of epidemics and endemic conditions, and the means of prevention, suppression or
 11 control of those conditions; the source of sickness and mortality, and the effects of environment,
 12 employment, habits and circumstances of life on the public health.

13 The commissioner shall further make, or cause to be made, inspections and examinations

14 of food, drink and drugs offered for sale or public consumption in the manner the commissioner
15 considers necessary to protect the public health and shall report all violations of laws and rules
16 relating to the law to the prosecuting attorney of the county in which the violations occur;

17 (c) To make complaint or cause proceedings to be instituted against any person,
18 corporation or other entity for the violation of any public health law before any court or agency,
19 without being required to give security for costs; the action may be taken without the sanction of
20 the prosecuting attorney of the county in which the proceedings are instituted or to which the
21 proceedings relate;

22 (d) To promote the provision of essential public health services to citizens of this state;

23 (e) To monitor the administration, operation and coordination of the local boards of health
24 and local health officers. This may include, but is not limited to, requiring two or more local county
25 boards of health or any county or counties and one or more municipalities within or partially within
26 the county or counties to combine their service delivery and administrative duties. If the
27 commissioner feels that health care services offered through local boards of health could be better
28 provided to the citizens of the state through the combining of services, he or she may require that
29 local boards of health combine their administration for the purposes streamlined delivery of
30 services. The commissioner shall have the authority to require that two or more local county
31 boards of health or any county or counties and one or more municipalities within or partially within
32 the county or counties enter into then necessary agreements to combine administrative duties
33 and the operation of their services for better health care delivery. The Secretary of the Department
34 of Health and Human Resources shall propose rules for legislative approval to provide for the
35 combining of administrative functions and service delivery of two or more local boards of health
36 in accordance with the provisions of article three, chapter twenty-nine-a of this code if the
37 commissioner recommends a combining of service delivery and administration of two or more
38 local boards of health.

39 (f) Any existing agreements between two or more local boards of health in place at the
40 time of the reenactment of this section in the 2016 regular session of the Legislature shall not be
41 required to alter or modify any agreement or operation which does not meet the requirements set
42 forth in any legislative rule promulgated pursuant to the provisions of this subsection.

43 (g) Nothing in this section should be construed to permit the commissioner to require that
44 two local boards of health be combined beyond combining of administrative functions and
45 services delivery.

46 ~~(f)~~ (h) To develop and maintain a state plan of operation that sets forth the needs of the
47 state in the areas of public health; goals and objectives for meeting those needs; methods for
48 achieving the stated goals and objectives; and needed personnel, funds and authority for
49 achieving the goals and objectives;

50 ~~(g)~~ (i) To collect data as may be required to foster knowledge on the citizenry's health
51 status, the health system and costs of health care;

52 ~~(h)~~ (j) To delegate to any appointee, assistant or employee any and all powers and duties
53 vested in the commissioner, including, but not limited to, the power to execute contracts and
54 agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the
55 acts of his or her appointees, assistants and employees;

56 ~~(i)~~ (k) To transfer at the direction of the secretary, notwithstanding other provisions of this
57 code, any patient or resident between hospitals and facilities under the control of the
58 commissioner and, by agreement with the state Commissioner of Corrections and otherwise in
59 accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state
60 Commissioner of Corrections;

61 ~~(j)~~ (l) To make periodic reports to the Governor and to the Legislature relative to specific
62 subject areas of public health, the state facilities under the supervision of the commissioner, or
63 other matters affecting the public health of the people of the state, at the direction of the secretary;

64 ~~(k)~~ (m) At the direction of the secretary, to accept and use for the benefit of the health of

65 the people of this state, any gift or devise of any property or thing which is lawfully given: *Provided,*
66 That if any gift is for a specific purpose or for a particular state hospital or facility it shall be used
67 as specified. Any profit which may arise from any gift or devise of any property or thing shall be
68 deposited in a special revenue fund with the State Treasurer and shall be used only as specified
69 by the donor or donors;

70 ~~(t)~~ (n) To acquire by condemnation or otherwise any interest, right, privilege, land or
71 improvement and hold title to the land or improvement, for the use or benefit of the state or a state
72 hospital or facility, and, by and with the consent of the Governor, and at the direction of the
73 secretary, to sell, exchange or otherwise convey any interest, right, privilege, land or improvement
74 acquired or held by the state, state hospital or state facility and deposit the proceeds from the
75 sale, exchange or other conveyance into the hospital services revenue account. Any
76 condemnation proceedings shall be conducted pursuant to chapter fifty-four of this code;

77 ~~(m)~~ (o) To inspect and enforce rules to control the sanitary conditions of and license all
78 institutions and health care facilities as set forth in this chapter, including, but not limited to,
79 schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,
80 factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places
81 open to the general public and inviting public patronage or public assembly, or tendering to the
82 public any item for human consumption and places where trades or industries are conducted;

83 ~~(n)~~ (p) To make inspections, conduct hearings, and to enforce the legislative rules
84 concerning occupational and industrial health hazards, the sanitary condition of streams, sources
85 of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel
86 connected with the supplies, facilities or systems without regard to whether they are publicly or
87 privately owned; and to make inspections, conduct hearings and enforce the legislative rules
88 concerning the design of chlorination and filtration facilities and swimming pools;

89 ~~(o)~~ (q) To provide in accordance with this subdivision and the definitions and other
90 provisions of article one-a, chapter twenty-seven of this code, and as directed by the secretary,

91 for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug
92 abusers; for research into the cause and prevention of alcoholism and drug abuse; for the training
93 and employment of personnel to provide the requisite rehabilitation of alcoholics and drug
94 abusers; and for the education of the public concerning alcoholism and drug abuse. That the
95 commissioner, as directed by the secretary, shall propose rules for legislative approval in
96 accordance with the provisions of article three, chapter twenty-nine-a of this code that would
97 require each local board of health as defined in article two, section three of this chapter to develop
98 and operate a needle exchange program;

99 ~~(p)~~ (r) To provide in accordance with this subdivision for a program for the care, treatment
100 and rehabilitation of the parents of sudden infant death syndrome victims; for the training and
101 employment of personnel to provide the requisite rehabilitation of parents of sudden infant death
102 syndrome victims; for the education of the public concerning sudden infant death syndrome; for
103 the responsibility of reporting to the Legislature on a quarterly basis the incidence of sudden infant
104 death syndrome cases occurring in West Virginia; for the education of police, employees and
105 volunteers of all emergency services concerning sudden infant death syndrome; for the state
106 sudden infant death syndrome advisory council to develop regional family support groups to
107 provide peer support to families of sudden infant death syndrome victims; and for requesting
108 appropriation of funds in both federal and state budgets to fund the sudden infant death syndrome
109 program;

110 ~~(q)~~ (s) To establish and maintain a state hygienic laboratory as an aid in performing the
111 duties imposed upon the commissioner, and to employ chemists, bacteriologists, and other
112 employees that may be necessary to properly operate the laboratory. The commissioner may
113 establish branches of the state laboratory at any points within the state that are necessary in the
114 interest of the public health;

115 ~~(r)~~ (t) To establish and fund a uniform health professionals data system to collect and
116 maintain uniform data on all health professionals in the state. This data shall include, but not be

117 limited to, the following information about each health professional: His or her name, profession,
118 the area of the state where he or she is practicing, his or her educational background, his or her
119 employer's name, and number of years practicing within the profession. The boards provided for
120 in articles three, four, four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen, sixteen, twenty,
121 twenty-one, twenty-three, twenty-eight, thirty-one, thirty-two, thirty-four, thirty-five, thirty-six and
122 thirty-seven, chapter thirty of this code shall annually collect the data on health professionals
123 under their jurisdiction in the format prescribed by the commissioner. Each board shall pay to the
124 bureau annually, an amount determined by the commissioner to be a pro rata portion, for
125 anticipated expenses to establish and operate the uniform health professionals data system
126 required by this section. The commissioner may standardize data collection methods if necessary
127 to implement the provisions of this section. The commissioner shall publish annually and make
128 available, upon request, a report setting forth the data which was collected the previous year;
129 areas of the state which the collected data indicates have a shortage of health professionals; and
130 projections, based upon the collected data, as to the need for more health professionals in certain
131 areas;

132 ~~(s)~~ (u) To expend, for the purpose of performing the public health duties imposed on the
133 bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may
134 make advance payments to public and nonprofit health services providers when the commissioner
135 determines it is necessary for the initiation or continuation of public health services. The advance
136 payments, being in derogation of the principle of payment only after receipt of goods or services,
137 shall be authorized only after serious consideration by the commissioner of the necessity of the
138 advance payments and shall be for a period no greater than ninety days in advance of rendition
139 of service or receipt of goods and continuation of health services; and

140 ~~(t)~~ (v) To exercise all other powers delegated to the commissioner by the secretary or by
141 this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities
142 necessary and incident to the authority and area of concern entrusted to the bureau or the

143 commissioner.

ARTICLE 2. LOCAL BOARDS OF HEALTH

§16-2-5. Authority to create, establish and maintain combined local boards of health; service area.

1 Any two or more counties or any county or counties and one or more municipalities within
2 or partially within the county or counties may voluntarily combine to create, establish and maintain
3 a combined local board of health organized pursuant to and with the powers and duties prescribed
4 by this article. The plan of combination must be approved by the commissioner. The service area
5 of any combined local board of health is the combined territorial limits of the participating
6 municipality or municipalities and county or counties: *Provided*, That if all or a portion of a
7 participating municipality is located in a nonparticipating county, the service area of the combined
8 local board of health is limited to the territorial limits of the municipality and does not extend to or
9 include any area of the nonparticipating county outside of the municipal limits: *Provided, however*,
10 That the service area of a combined local board does not extend to or include any area within the
11 service area of a municipal board of health maintaining a separate full-time municipal health
12 department under the supervision of a municipal local health officer.

§16-2-11. Local board of health; powers and duties.

1 (a) Each local board of health created, established and operated pursuant to the
2 provisions of this article shall:

3 (1) Provide the following basic public health services and programs in accordance with
4 state public health performance-based standards:

5 (i) Community health promotion including assessing and reporting community health
6 needs to improve health status, facilitating community partnerships including identifying the
7 community's priority health needs, mobilization of a community around identified priorities and
8 monitoring the progress of community health education services;

9 (ii) Environmental health protection including the promoting and maintaining of clean and

10 safe air, water, food and facilities and the administering of public health laws as specified by the
11 commissioner as to general sanitation, the sanitation of public drinking water, sewage and
12 wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

13 (iii) Communicable or reportable disease prevention and control including disease
14 surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and
15 prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases,
16 HIV/AIDS, tuberculosis and other communicable and reportable diseases;

17 (2) Appoint a local health officer to serve at the will and pleasure of the local board of
18 health with approval of the commissioner;

19 (3) Submit a general plan of operation to the commissioner for approval, if it receives any
20 state or federal money for health purposes. This program plan shall be submitted annually and
21 comply with provisions of the local board of health standards administrative rule;

22 (4) Provide equipment and facilities for the local health department that are in compliance
23 with federal and state law;

24 (5) Permit the commissioner to act by and through it, as needed. The commissioner may
25 enforce all public health laws of this state, the rules and orders of the secretary, any county
26 commission orders or municipal ordinances of the board's service area relating to public health,
27 and the rules and orders of the local board within the service area of a local board. The
28 commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner,
29 a public health emergency exists or when the local board fails or refuses to enforce public health
30 laws and rules necessary to prevent and control the spread of a communicable or reportable
31 disease dangerous to the public health. The expenses incurred shall be charged against the
32 counties or municipalities concerned;

33 (6) Deposit all moneys and collected fees into an account designated for local board of
34 health purposes. The moneys for a municipal board of health shall be deposited with the municipal
35 treasury in the service area. The moneys for a county board of health shall be deposited with the

36 county treasury in the service area. The moneys for a combined local board of health shall be
37 deposited in an account as designated in the plan of combination: *Provided*, That nothing
38 contained in this subsection is intended to conflict with the provisions of article one, chapter
39 sixteen of this code;

40 (7) Submit vouchers or other instruments approved by the board and signed by the local
41 health officer or designated representative to the county or municipal treasurer for payment of
42 necessary and reasonable expenditures from the county or municipal public health funds:
43 *Provided*, That a combined local board of health shall draw upon its public health funds account
44 in the manner designated in the plan of combination;

45 (8) Participate in audits, be in compliance with tax procedures required by the state and
46 annually develop a budget for the next fiscal year;

47 (9) Perform public health duties assigned by order of a county commission or by municipal
48 ordinance consistent with state public health laws; and

49 (10) Enforce the public health laws of this state and any other laws of this state applicable
50 to the local board.

51 (b) Each local board of health created, established and operated pursuant to the
52 provisions of this article may:

53 (1) Provide primary care services, clinical and categorical programs, and enhanced public
54 health services;

55 (2) Employ or contract with any technical, administrative, clerical or other persons, to serve
56 as needed and at the will and pleasure of the local board of health. Staff and any contractors
57 providing services to the board shall comply with applicable West Virginia certification and
58 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the
59 Division of Personnel under section six, article ten, chapter twenty-nine of this code. However,
60 any local board of health may, in the alternative and with the consent and approval of the
61 appointing authority, establish and adopt a merit system for its eligible employees. The merit

62 system may be similar to the state merit system and may be established by the local board by its
63 order, subject to the approval of the appointing authority, adopting and making applicable to the
64 local health department all, or any portion of any order, rule, standard, or compensation rate in
65 effect in the state merit system as may be desired and as is properly applicable;

66 (3) Adopt and promulgate and from time to time amend rules consistent with state public
67 health laws and the rules of the West Virginia State Department of Health and Human Resources
68 that are necessary and proper for the protection of the general health of the service area and the
69 prevention of the introduction, propagation and spread of disease. All rules shall be filed with the
70 clerk of the county commission or the clerk or the recorder of the municipality or both and shall
71 be kept by the clerk or recording officer in a separate book as public records;

72 (4) Accept, receive and receipt for money or property from any federal, state or local
73 governmental agency, from any other public source or from any private source, to be used for
74 public health purposes or for the establishment or construction of public health facilities;

75 (5) Assess, charge and collect fees for permits and licenses for the provision of public
76 health services: *Provided*, That permits and licenses required for agricultural activities may not be
77 assessed, charged or collected: *Provided, however*, That a local board of health may assess,
78 charge and collect all of the expenses of inspection of the physical plant and facilities of any
79 distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization
80 facilities are located outside this state but who sells or distributes in the state, or transports,
81 causes or permits to be transported into this state, milk or milk products for resale, use or
82 consumption in the state and in the service area of the local board of health. A local board of
83 health may not assess, charge and collect the expenses of inspection if the physical plant and
84 facilities are regularly inspected by another agency of this state or its governmental subdivisions
85 or by an agency of another state or its governmental subdivisions certified as an approved
86 inspection agency by the commissioner. No more than one local board of health may act as the
87 regular inspection agency of the physical plant and facilities; when two or more include an

88 inspection of the physical plant and facilities in a regular schedule, the commissioner shall
89 designate one as the regular inspection agency;

90 (6) Assess, charge and collect fees for services provided by the local health department:

91 *Provided*, That fees for services shall be submitted to and approved by the commissioner:

92 *Provided, however*, That local boards of health are required to bill health insurance plans,

93 including Medicaid, for delivery of any health care services if an individual is treated in a local

94 health department and has health insurance or is a participant in Medicaid;

95 (7) Contract for payment with any municipality, county or Board of Education for the

96 provision of local health services or for the use of public health facilities. Any contract shall be in

97 writing and permit provision of services or use of facilities for a period not to exceed one fiscal

98 year. The written contract may include provisions for annual renewal by agreement of the parties;

99 and

100 (8) Retain and make available child safety car seats, collect rental and security deposit

101 fees for the expenses of retaining and making available child safety car seats, and conduct public

102 education activities concerning the use and preventing the misuse of child safety car seats:

103 *Provided*, That this subsection is not intended to conflict with the provisions of section forty-six,

104 article fifteen, chapter seventeen-c of this code: *Provided, however*, That any local board of health

105 offering a child safety car seat program or employee or agent of a local board of health is immune

106 from civil or criminal liability in any action relating to the improper use, malfunction or inadequate

107 maintenance of the child safety car seat and in any action relating to the improper placement,

108 maintenance or securing of a child in a child safety car seat.

109 (c) The local boards of health are charged with protecting the health and safety, as well

110 as promoting the interests of the citizens of West Virginia. All state funds appropriated by the

111 Legislature for the benefit of local boards of health shall be used for provision of basic public

112 health services.

113

NOTE: The purpose of this bill is to modify administration of local boards of health; provide for regionalization of administration and services of local health departments; require local health departments to bill health insurance plans for services that are provided; mandate development of needle exchange programs in local health departments; and provide for rulemaking authority.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.