

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 506

**FISCAL
NOTE**

BY SENATOR HALL

[Introduced February 4, 2016;

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

1 A BILL to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §16-2-11 of said code, all relating to local health departments;
 3 clarifying the powers and duties of the Commissioner of Public Health as it relates to
 4 administration of local boards of health; clarifying provisions related to the submission of
 5 a program plan by local boards of health; authorizing local health departments to bill health
 6 insurance plans for services; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

1 That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §16-2-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose rules in accordance with the provisions of article three,
 2 chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of
 3 this chapter. The secretary may appoint or designate advisory councils of professionals in the
 4 areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental
 5 health and intellectual disability centers and any other areas necessary to advise the secretary
 6 on rules.

7 (b) The rules may include, but are not limited to, the regulation of:

8 (1) Land usage endangering the public health: *Provided*, That no rules may be
 9 promulgated or enforced restricting the subdivision or development of any parcel of land within
 10 which the individual tracts, lots or parcels exceed two acres each in total surface area and which
 11 individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet
 12 even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total
 13 surface area, and which tracts are sold, leased or utilized only as single-family dwelling units.
 14 Notwithstanding the provisions of this subsection, nothing in this section may be construed to
 15 abate the authority of the department to:

16 (A) Restrict the subdivision or development of a tract for any more intense or higher density
17 occupancy than a single-family dwelling unit;

18 (B) Propose or enforce rules applicable to single-family dwelling units for single-family
19 dwelling unit sanitary sewerage disposal systems; or

20 (C) Restrict any subdivision or development which might endanger the public health, the
21 sanitary condition of streams or sources of water supply;

22 (2) The sanitary condition of all institutions and schools, whether public or private, public
23 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open
24 to the general public and inviting public patronage or public assembly, or tendering to the public
25 any item for human consumption and places where trades or industries are conducted;

26 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources
27 of water supply, sewerage facilities and plumbing systems and the qualifications of personnel
28 connected with any of those facilities, without regard to whether the supplies or systems are
29 publicly or privately owned; and the design of all water systems, plumbing systems, sewerage
30 systems, sewage treatment plants, excreta disposal methods and swimming pools in this state,
31 whether publicly or privately owned;

32 (4) Safe drinking water, including:

33 (A) The maximum contaminant levels to which all public water systems must conform in
34 order to prevent adverse effects on the health of individuals and, if appropriate, treatment
35 techniques that reduce the contaminant or contaminants to a level which will not adversely affect
36 the health of the consumer. The rule shall contain provisions to protect and prevent contamination
37 of wellheads and well fields used by public water supplies so that contaminants do not reach a
38 level that would adversely affect the health of the consumer;

39 (B) The minimum requirements for: Sampling and testing; system operation; public
40 notification by a public water system on being granted a variance or exemption or upon failure to
41 comply with specific requirements of this section and rules promulgated under this section; record

42 keeping; laboratory certification; as well as procedures and conditions for granting variances and
43 exemptions to public water systems from state public water systems rules; and

44 (C) The requirements covering the production and distribution of bottled drinking water
45 and may establish requirements governing the taste, odor, appearance and other consumer
46 acceptability parameters of drinking water;

47 (5) Food and drug standards, including cleanliness, proscription of additives, proscription
48 of sale and other requirements in accordance with article seven of this chapter as are necessary
49 to protect the health of the citizens of this state;

50 (6) The training and examination requirements for emergency medical service attendants
51 and emergency medical care technician- paramedics; the designation of the health care facilities,
52 health care services and the industries and occupations in the state that must have emergency
53 medical service attendants and emergency medical care technician-paramedics employed and
54 the availability, communications and equipment requirements with respect to emergency medical
55 service attendants and to emergency medical care technician-paramedics. Any regulation of
56 emergency medical service attendants and emergency medical care technician- paramedics may
57 not exceed the provisions of article four-c of this chapter;

58 (7) The health and sanitary conditions of establishments commonly referred to as bed and
59 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment
60 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may
61 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer
62 rooms to install a restaurant-style or commercial food service facility. The secretary may not
63 require an owner of a bed and breakfast providing sleeping accommodations of more than six
64 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast
65 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

66 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,
67 laboratory service fees, environmental health service fees, health facility fees and permit fees;

68 (9) The collection of data on health status, the health system and the costs of health care;

69 (10) Opioid treatment programs duly licensed and operating under the requirements of
70 chapter twenty-seven of this code.

71 (A) The Health Care Authority shall develop new certificate of need standards, pursuant
72 to the provisions of article two-d of this chapter, that are specific for opioid treatment program
73 facilities.

74 (B) No applications for a certificate of need for opioid treatment programs may be
75 approved by the Health Care Authority as of the effective date of the 2007 amendments to this
76 subsection.

77 (C) There is a moratorium on the licensure of new opioid treatment programs that do not
78 have a certificate of need as of the effective date of the 2007 amendments to this subsection,
79 which shall continue until the Legislature determines that there is a necessity for additional opioid
80 treatment facilities in West Virginia.

81 (D) The secretary shall file revised emergency rules with the Secretary of State to regulate
82 opioid treatment programs in compliance with the provisions of this section. Any opioid treatment
83 program facility that has received a certificate of need pursuant to article two-d, of this chapter by
84 the Health Care Authority shall be permitted to proceed to license and operate the facility.

85 (E) All existing opioid treatment programs shall be subject to monitoring by the secretary.
86 All staff working or volunteering at opioid treatment programs shall complete the minimum
87 education, reporting and safety training criteria established by the secretary. All existing opioid
88 treatment programs shall be in compliance within one hundred eighty days of the effective date
89 of the revised emergency rules as required herein. The revised emergency rules shall provide at
90 a minimum:

91 (i) That the initial assessment prior to admission for entry into the opioid treatment program
92 shall include an initial drug test to determine whether an individual is either opioid addicted or
93 presently receiving methadone for an opioid addiction from another opioid treatment program.

94 (ii) The patient may be admitted to the opioid treatment program if there is a positive test
95 for either opioids or methadone or there are objective symptoms of withdrawal, or both, and all
96 other criteria set forth in the rule for admission into an opioid treatment program are met.
97 Admission to the program may be allowed to the following groups with a high risk of relapse
98 without the necessity of a positive test or the presence of objective symptoms: Pregnant women
99 with a history of opioid abuse, prisoners or parolees recently released from correctional facilities,
100 former clinic patients who have successfully completed treatment but who believe themselves to
101 be at risk of imminent relapse and HIV patients with a history of intravenous drug use.

102 (iii) That within seven days of the admission of a patient, the opioid treatment program
103 shall complete an initial assessment and an initial plan of care.

104 (iv) That within thirty days after admission of a patient, the opioid treatment program shall
105 develop an individualized treatment plan of care and attach the plan to the patient's chart no later
106 than five days after the plan is developed. The opioid treatment program shall follow guidelines
107 established by a nationally recognized authority approved by the secretary and include a recovery
108 model in the individualized treatment plan of care. The treatment plan is to reflect that
109 detoxification is an option for treatment and supported by the program; that under the
110 detoxification protocol the strength of maintenance doses of methadone should decrease over
111 time, the treatment should be limited to a defined period of time, and participants are required to
112 work toward a drug-free lifestyle.

113 (v) That each opioid treatment program shall report and provide statistics to the
114 Department of Health and Human Resources at least semiannually which includes the total
115 number of patients; the number of patients who have been continually receiving methadone
116 treatment in excess of two years, including the total number of months of treatment for each such
117 patient; the state residency of each patient; the number of patients discharged from the program,
118 including the total months in the treatment program prior to discharge and whether the discharge
119 was for:

- 120 (A) Termination or disqualification;
- 121 (B) Completion of a program of detoxification;
- 122 (C) Voluntary withdrawal prior to completion of all requirements of detoxification as
123 determined by the opioid treatment program;
- 124 (D) Successful completion of the individualized treatment care plan; or
- 125 (E) An unexplained reason.
- 126 (vi) That random drug testing of all patients shall be conducted during the course of
127 treatment at least monthly. For purposes of these rules, "random drug testing" means that each
128 patient of an opioid treatment program facility has a statistically equal chance of being selected
129 for testing at random and at unscheduled times. Any refusal to participate in a random drug test
130 shall be considered a positive test. Nothing contained in this section or the legislative rules
131 promulgated in conformity herewith will preclude any opioid treatment program from administering
132 such additional drug tests as determined necessary by the opioid treatment program.
- 133 (vii) That all random drug tests conducted by an opioid treatment program shall, at a
134 minimum, test for the following:
- 135 (A) Opiates, including oxycodone at common levels of dosing; (B) Methadone and any
136 other medication used by the program as an intervention;
- 137 (C) Benzodiazepine including diazepam, lorazepam, clonazepam and alprazolam;
- 138 (D) Cocaine;
- 139 (E) Methamphetamine or amphetamine;
- 140 (F) Tetrahydrocannabinol, delta-9-tetrahydrocannabinol or dronabinol or other similar
141 substances; or
- 142 (G) Other drugs determined by community standards, regional variation or clinical
143 indication.
- 144 (viii) That a positive drug test is a test that results in the presence of any drug or substance
145 listed in this schedule and any other drug or substance prohibited by the opioid treatment program.

146 A positive drug test result after the first six months in an opioid treatment program shall result in
147 the following:

148 (A) Upon the first positive drug test result, the opioid treatment program shall:

149 (1) Provide mandatory and documented weekly counseling of no less than thirty minutes
150 to the patient, which shall include weekly meetings with a counselor who is licensed, certified or
151 enrolled in the process of obtaining licensure or certification in compliance with the rules and on
152 staff at the opioid treatment program;

153 (2) Immediately revoke the take home methadone privilege for a minimum of thirty days;
154 and

155 (B) Upon a second positive drug test result within six months of a previous positive drug
156 test result, the opioid treatment program shall:

157 (1) Provide mandatory and documented weekly counseling of no less than thirty minutes,
158 which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the
159 process of obtaining licensure or certification in compliance with the rules and on staff at the opioid
160 treatment program;

161 (2) Immediately revoke the take-home methadone privilege for a minimum of sixty days;
162 and

163 (3) Provide mandatory documented treatment team meetings with the patient.

164 (C) Upon a third positive drug test result within a period of six months the opioid treatment
165 program shall:

166 (1) Provide mandatory and documented weekly counseling of no less than thirty minutes,
167 which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the
168 process of obtaining licensure or certification in compliance with the rules and on staff at the opioid
169 treatment program;

170 (2) Immediately revoke the take-home methadone privilege for a minimum of one hundred
171 twenty days; and

172 (3) Provide mandatory and documented treatment team meetings with the patient which
173 will include, at a minimum: The need for continuing treatment; a discussion of other treatment
174 alternatives; and the execution of a contract with the patient advising the patient of discharge for
175 continued positive drug tests.

176 (D) Upon a fourth positive drug test within a six-month period, the patient shall be
177 immediately discharged from the opioid treatment program or, at the option of the patient, shall
178 immediately be provided the opportunity to participate in a twenty- one day detoxification plan,
179 followed by immediate discharge from the opioid treatment program: *Provided*, That testing
180 positive solely for tetrahydrocannabinol, delta-9-tetrahydrocannabinol or dronabinol or similar
181 substances shall not serve as a basis for discharge from the program.

182 (ix) That the opioid treatment program must report and provide statistics to the Department
183 of Health and Human Resources demonstrating compliance with the random drug test rules,
184 including:

185 (A) Confirmation that the random drug tests were truly random in regard to both the
186 patients tested and to the times random drug tests were administered by lottery or some other
187 objective standard so as not to prejudice or protect any particular patient;

188 (B) Confirmation that the random drug tests were performed at least monthly for all
189 program participants;

190 (C) The total number and the number of positive results; and

191 (D) The number of expulsions from the program.

192 (x) That all opioid treatment facilities be open for business seven days per week; however,
193 the opioid treatment center may be closed for eight holidays and two training days per year. During
194 all operating hours, every opioid treatment program shall have a health care professional as
195 defined by rule promulgated by the secretary actively licensed in this state present and on duty at
196 the treatment center and a physician actively licensed in this state available for consultation.

197 (xi) That the Office of Health Facility Licensure and Certification develop policies and

198 procedures in conjunction with the Board of Pharmacy that will allow physicians treating patients
199 through an opioid treatment program access to the Controlled Substances Monitoring Program
200 database maintained by the Board of Pharmacy at the patient's intake, before administration of
201 methadone or other treatment in an opioid treatment program, after the initial thirty days of
202 treatment, prior to any take-home medication being granted, after any positive drug test, and at
203 each ninety-day treatment review to ensure the patient is not seeking prescription medication
204 from multiple sources. The results obtained from the Controlled Substances Monitoring Program
205 database shall be maintained with the patient records.

206 (xii) That each opioid treatment program shall establish a peer review committee, with at
207 least one physician member, to review whether the program is following guidelines established
208 by a nationally recognized authority approved by the secretary. The secretary shall prescribe the
209 procedure for evaluation by the peer review. Each opioid treatment program shall submit a report
210 of the peer review results to the secretary on a quarterly basis.

211 ~~(xiii) (11) The secretary shall propose a rule for legislative approval in accordance with~~
212 ~~the provisions of article three, chapter twenty-nine-a of this code for the~~ The distribution of state
213 aid to local health departments and basic public health services funds.

214 The rule shall include the following provisions:

215 Base allocation amount for each county;

216 Establishment and administration of an emergency fund of no more than two percent of
217 the total annual funds of which unused amounts are to be distributed back to local boards of health
218 at the end of each fiscal year;

219 A calculation of funds utilized for state support of local health departments;

220 Distribution of remaining funds on a per capita weighted population approach which
221 factors coefficients for poverty, health status, population density and health department
222 interventions for each county and a coefficient which encourages counties to merge in the
223 provision of public health services;

224 A hold-harmless provision to provide that each local health department receives no less
225 in state support for a period of four years beginning in the 2009 budget year.

226 The Legislature finds that an emergency exists and, therefore, the secretary shall file an
227 emergency rule to implement the provisions of this section pursuant to the provisions of section
228 fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is subject to the prior
229 approval of the Legislative Oversight Commission on Health and Human Resources
230 Accountability prior to filing with the Secretary of State.

231 (12) Standards for local boards of health created and organized pursuant to article two
232 of this chapter, including procedures related to an intervention related to a public health
233 emergency;

234 ~~(xiv)~~ (13) Other health-related matters which the department is authorized to supervise
235 and for which the rule-making authority has not been otherwise assigned.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§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~~ program plan to the commissioner for approval, if
20 it receives any state or federal money for health purposes. This program plan shall be submitted
21 annually and ~~comply with provisions of the~~ shall specify the services to be provided in addition to
22 the services required by law and shall contain such other provisions required by the local board
23 of health standards ~~administrative~~ legislative rule;

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

26 (5) Permit the commissioner to act by and through it, as needed. The commissioner may
27 enforce all public health laws of this state, the rules and orders of the secretary, any county
28 commission orders or municipal ordinances of the board's service area relating to public health,
29 and the rules and orders of the local board within the service area of a local board. ~~The~~
30 ~~commissioner may enforce these laws, rules and orders when~~ When in the opinion of the
31 commissioner, a public health emergency exists ~~or when the local board fails or refuses to enforce~~
32 ~~public health laws and rules necessary to prevent and control the spread of a communicable or~~
33 ~~reportable disease dangerous to the public health~~ the commissioner shall intervene in the
34 operation of the local board of health to cause improvements to be made that will ensure the
35 consistent performance of duties relating to basic public health services, other health services,
36 and the enforcement of the laws and rules of this state pertaining to public health. The expenses
37 incurred shall be charged against the counties or municipalities concerned. For the purposes of
38 this subdivision a "public health emergency" means circumstances where a local board fails,

39 refuses or is unable to enforce public health laws and rules, including, but not limited to, laws or
40 rules necessary to prevent and control the spread of a communicable or reportable disease
41 dangerous to the public health;

42 (6) Deposit all moneys and collected fees into an account designated for local board of
43 health purposes. The moneys for a municipal board of health shall be deposited with the municipal
44 treasury in the service area. The moneys for a county board of health shall be deposited with the
45 county treasury in the service area. The moneys for a combined local board of health shall be
46 deposited in an account as designated in the plan of combination: *Provided*, That nothing
47 contained in this subsection is intended to conflict with the provisions of article one, chapter
48 sixteen of this code;

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

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

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

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

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

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

64 (2) Employ or contract with any technical, administrative, clerical or other persons, to serve

65 as needed and at the will and pleasure of the local board of health. Staff and any contractors
66 providing services to the board shall comply with applicable West Virginia certification and
67 licensure requirements. Eligible staff employed by the board shall be covered by the rules of the
68 Division of Personnel under section six, article ten, chapter twenty-nine of this code. However,
69 any local board of health may, in the alternative and with the consent and approval of the
70 appointing authority, establish and adopt a merit system for its eligible employees. The merit
71 system may be similar to the state merit system and may be established by the local board by its
72 order, subject to the approval of the appointing authority, adopting and making applicable to the
73 local health department all, or any portion of any order, rule, standard, or compensation rate in
74 effect in the state merit system as may be desired and as is properly applicable;

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

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

84 (5) Assess, charge and collect fees for permits and licenses for the provision of public
85 health services: *Provided*, That permits and licenses required for agricultural activities may not be
86 assessed, charged or collected: *Provided, however*, That a local board of health may assess,
87 charge and collect all of the expenses of inspection of the physical plant and facilities of any
88 distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization
89 facilities are located outside this state but who sells or distributes in the state, or transports,
90 causes or permits to be transported into this state, milk or milk products for resale, use or

91 consumption in the state and in the service area of the local board of health. A local board of
92 health may not assess, charge and collect the expenses of inspection if the physical plant and
93 facilities are regularly inspected by another agency of this state or its governmental subdivisions
94 or by an agency of another state or its governmental subdivisions certified as an approved
95 inspection agency by the commissioner. No more than one local board of health may act as the
96 regular inspection agency of the physical plant and facilities; when two or more include an
97 inspection of the physical plant and facilities in a regular schedule, the commissioner shall
98 designate one as the regular inspection agency;

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

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

101 *Provided, however, That health care service fees that are billable to a health insurance provider,*

102 *including Medicaid, may be billed at the maximum allowable rate and are not subject to*

103 *commissioner approval;*

104 (7) Contract for payment with any municipality, county or Board of Education for the
105 provision of local health services or for the use of public health facilities. Any contract shall be in
106 writing and permit provision of services or use of facilities for a period not to exceed one fiscal
107 year. The written contract may include provisions for annual renewal by agreement of the parties;
108 and

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

110 fees for the expenses of retaining and making available child safety car seats, and conduct public
111 education activities concerning the use and preventing the misuse of child safety car seats:

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

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

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

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

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

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

118 (c) The local boards of health are charged with protecting the health and safety, as well
119 as promoting the interests of the citizens of West Virginia. All state funds appropriated by the
120 Legislature for the benefit of local boards of health shall be used for provision of basic public
121 health services.

NOTE: The purpose of this bill is to modify the administration of local boards of health by clarifying requirements with regard to the submission of program plans by local boards of health; and authorizing local health departments to bill health insurance plans for services.

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