

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### Senate Bill 682

FISCAL  
NOTE

BY SENATOR TARR

[Introduced January 31, 2020; referred  
to the Committee on Health and Human Resources;  
and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §9-11-1, §9-11-2, §9-11-3, §9-11-4, §9-11-5, §9-11-6, and §9-11-7, all relating  
 3 to improving the quality of West Virginia’s Medicaid program; establishing a pilot program  
 4 to implement smart health cards for the transmission of health care-related information for  
 5 certain Medicaid beneficiaries between the Department of Health and Human Resources  
 6 and public and private health care providers; defining terms; establishing the Smart Health  
 7 Card Medicaid Pilot Program; providing implementation date for pilot program; outlining  
 8 goals of the pilot program; setting forth the requirements for establishing the pilot program;  
 9 setting forth cybersecurity procurement requirements for vendors who provide technology  
 10 and services relating to the pilot program; setting forth the requirements of the smart health  
 11 card; restricting disclosure of health information to the same extent as federal HIPAA  
 12 requirements; establishing annual reporting requirement to the Legislative Committee on  
 13 Health and Human Resources Accountability; and providing for a sunset date of June 30,  
 14 2024.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 11. SMART HEALTH CARD MEDICAID PILOT PROGRAM.**

**§9-11-1. Definitions.**

1 As used in this article:

2 “Department” means the West Virginia Department of Health and Human Resources.

3 “DICOM” means Digital Imaging and Communications in Medicine, and is known as the  
 4 industry standard for communications and management of medical imaging information and  
 5 related data.

6 “Medicaid program” means the state plan implemented pursuant to the provisions of  
 7 subchapter 19, chapter seven, Title 42, United States Code, as that chapter has been and may  
 8 hereafter be amended.

9 “Medicaid recipient” means an individual eligible for Medicaid healthcare services from the

10 West Virginia Department of Health and Human Resources;  
11 “ONC” means the Office of the National Coordinator for Health Information Technology,  
12 and is a staff division of the Office of the Secretary within the United States Department of Health  
13 and Human Services.

14 “Secretary” means the Secretary of the West Virginia Department of Health and Human  
15 Resources.

16 “Smart health card” means a secure, electronic, machine readable, fraud resistant,  
17 tamper-resistant card that includes an embedded integrated circuit chip with a secure micro-  
18 controller.

**§9-11-2. Establishing the Smart Health Card Medicaid Pilot Program; goals of the pilot.**

1 On or before July 1, 2020, the secretary shall establish and implement a pilot program to  
2 assess the feasibility and advisability of using smart health cards and related technologies for  
3 Medicaid recipients, for the follow purposes:

4 (1) To promote interoperability of electronic medical record systems between public and  
5 private providers, and the department;

6 (2) To increase the quality of care received by Medicaid recipients, and reduce waste,  
7 fraud, and abuse within the Medicaid program;

8 (3) To reduce unnecessary and redundant medical procedures, including diagnostic  
9 testing, and prevent prescription drug abuse by improving real-time availability of electronic  
10 medical records and reports from disparate healthcare systems;

11 (4) To reduce administrative burdens and improve payment system efficiency for health  
12 care providers accepting payments from the Medicaid program;

13 (5) To expand patient ownership of, and access to, his or her individual medical records  
14 in a personal cloud-based portal; and

15 (6) To improve security protections against identity theft and other unlawful uses of  
16 personal health information.

**§9-11-3. Requirements of the pilot program.**

1 In establishing the pilot program, the secretary shall include the following requirements:

2 (1) The pilot program shall include at least 100,000 Medicaid recipients, who are at least  
3 55 years old and residents of the State of West Virginia.

4 (2) The secretary shall distribute smart health cards to all Medicaid recipients selected for  
5 the pilot program.

6 (3) The smart health card shall be used as an identification card for Medicaid recipients  
7 participating in the pilot program, and shall be used to verify the Medicaid recipient's identity and  
8 eligibility for services, prevent fraud, and authorize transactions.

9 (4) The smart health card shall interact with a cloud-based repository in the form of an  
10 individual's personal health record to collect and store all medical data of a Medicaid recipient  
11 participating in the pilot program, and the cloud-based repository shall be capable of automatically  
12 reconciling incoming data with a manual review and acceptance by the user for any  
13 unreconcilable issues to ensure the accuracy of the repository.

14 (5) The smart health card program shall include provisions whereby the data is used in  
15 reconciling medical service claims from providers whereby the integrity of the system may be  
16 maintained with regard to both compliance, waste, fraud, and abuse within the Medicaid program.

17 (6) All providers participating in the pilot program shall agree to a provision whereby  
18 payment for services rendered under the Medicaid program is withheld until all medical data  
19 associated with providing medical services for the Medicaid recipient has been reconciled or  
20 uploaded to the cloud-based repository by the provider, including structured and unstructured  
21 medical data. Unstructured medical data shall include all imaging files in native DICOM. All  
22 structured medical data submitted by providers using 2014 Stage II Certified for Meaningful Use  
23 EHR technology or later shall be in the form of a Transition of Care Summary Consolidated CDA  
24 in conformance with ONC 45 C.F.R. Part 170 Regulations.

25 (7) The secretary or his or her designee shall regularly monitor and review the medical

26 records of Medicaid recipients participating in the pilot program to identify and address inaccurate  
27 charges and instances of waste, fraud, or abuse.

28 (8) The secretary shall develop mechanisms for measuring costs savings to the  
29 department as a result of the pilot program.

30 (9) The secretary shall ensure compliance of all devices and systems used as part of the  
31 pilot program with standards for identity credentials developed by the American National  
32 Standards Institute and the National Institute of Standards and Technology and federal  
33 requirements relating to interoperability and information security, including all requirements under  
34 the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

35 (10) The smart health card and the cloud-based repository shall use a two-factor  
36 authentication system, at minimum, to protect personal identifying, health, and other information  
37 from unauthorized access or disclosure.

38 (11) The secretary shall develop procedures and guidelines for the use of smart health  
39 cards, card readers, kiosks, and other equipment that is part of the pilot program.

40 (12) The secretary shall develop procedures for addressing problems relating to the loss,  
41 theft, damage of, or malfunction of smart health cards, equipment, or any identifying documents  
42 or materials provided by the secretary under the pilot program.

43 (13) The secretary shall require that all healthcare providers participating in the Medicaid  
44 program and any associated state agencies honor the pilot program and all Medicaid recipients  
45 who receive smart health cards by supporting and maintaining all necessary elements contained  
46 within this bill. Any provider participating in the Medicaid program whose Medicaid patient  
47 population represents less than 20 percent of the total patients served by that provider annually  
48 may opt-out of the pilot program.

49 (14) The secretary is authorized to develop an incentive program for providers and/or  
50 Medicaid recipients to insure their willing participation in the pilot program.

51 (15) The secretary shall develop a hotline or other means by which anyone participating

52 in the pilot program can contact the department for assistance.

53 (16) The secretary shall engage in outreach to inform each Medicaid recipient participating  
54 in the pilot program of the following:

55 (A) The purpose of the pilot program,

56 (B) The process for enrolling in the pilot program, and verifying eligibility for the pilot  
57 program: and

58 (C) The steps that will be taken to protect personal identifying, health, and other  
59 information from unauthorized access or disclosure.

60 (17) Any vendor competing to provide smart health cards, a cloud-based platform, and  
61 other related technology and services relating to the implementation of the pilot program shall  
62 meet the following cybersecurity requirements at the procurement stage:

63 (A) The vendor shall submit to a third-party cybersecurity risk assessment as selected by  
64 the West Virginia Office of Technology;

65 (B) The vender shall agree to procure cybersecurity insurance from BRIM, in an amount  
66 deemed sufficient by the West Virginia Office of Technology, upon being awarded the  
67 procurement contract; and

68 (C) The vendor shall identify its method for cybersecurity protection and management of  
69 user accounts and security codes required by the pilot program.

**§9-11-4. Requirements of the smart health card.**

1 The smart health card to be used for the pilot program shall be capable the following:

2 (1) Providing the identification number of the Medicaid recipient;

3 (2) Providing a photo of the Medicaid recipient to the provider by electronic means;

4 (3) Containing the longitudinal medical history of the Medicaid recipient in a structured  
5 format, which can be used by healthcare providers at the point of care in a viewable, printable,  
6 downloadable format;

7 (4) Containing data that can be formatted for direct ingestion into any certified electronic

8 health record operating system, at the point of care, allowing proper reconciliation of the data to  
9 be achieved and eliminating erroneous entry of the data into the disparate electronic health record  
10 operating system;

11 (5) Maintaining appropriate security features; and

12 (6) Protecting personal privacy of the Medicaid recipient.

**§9-11-5. Privacy.**

1 Information contained on a smart health card as defined in this article may only be  
2 disclosed as permitted under state and federal regulations concerning the privacy of the  
3 individually identifiable health information, including Section 264(c) of the Health Insurance  
4 Portability and Accountability Act of 1996 (Public Law 104-191; 42 U.S.C. § 1320d-2 note), as it  
5 is currently enacted and may be amended in the future.

**§9-11-6. Reports.**

1 On or before December 1, 2021, and on December 1 in each year after that, the secretary  
2 shall submit a report to the Legislative Committee on Health and Human Resources Accountability  
3 relating to the smart health card pilot program, and the report shall contain the following  
4 information:

5 (1) A description of the design and development of the smart health card pilot program;

6 (2) The projected savings, if any, to Medicaid based on implementation of the pilot program

7 (3) A detailed description of the feasibility and advisability of expanding the pilot program

8 (4) Recommendations for any legislative and administrative actions as the secretary  
9 considers appropriate regarding implementation of the pilot program on a state-wide basis with  
10 respect to the Medicaid program;

11 (5) Recommendations for any legislative and administrative actions as the secretary  
12 considers appropriate regarding implementation of the pilot program in conjunction with other  
13 publicly funded health care programs in West Virginia.

**§9-11-7. Sunset date.**

1 This article expires on June 30, 2024, unless reauthorized by the Legislature.

NOTE: The purpose of this bill is to create a pilot program within the Department of Health and Human Resources to implement smart health cards for individuals receiving Medicaid healthcare benefits. The smart health card pilot program would: (1) Promote interoperability of electronic medical record systems between public and private providers, and the department; (2) increase the quality of care received by Medicaid recipients, and reduce waste, fraud, and abuse within the Medicaid program; (3) reduce unnecessary and redundant medical procedures, including diagnostic testing, and prevent prescription drug abuse by improving real-time availability of electronic medical records and reports from disparate healthcare systems; (4) reduce administrative burdens and improve payment system efficiency for health care providers accepting payments from the Medicaid program; (5) expand patient ownership of, and access to, his or her individual medical records in a personal cloud-based portal; and (6) improve security protections against identity theft and other unlawful uses of personal health information.

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