WEST virginia legislature

2021 THIRD EXTRAORDINARY session

Enrolled

Senate Bill 3026

By Senators Blair (Mr. President) and Baldwin
(By Request of the Executive)

[Passed October 15, 2021; in effect from passage]

AN ACT to amend and reenact §16-2-2, §16-2-11, and §16-2-13 of the Code of West Virginia, 1931, as amended, all relating to local boards of health; defining terms including “enforcement activity”, “enhanced public health services”, ”guidance”, “health order”, “local health department rule”, “local rule”, and “state rule”; clarifying the authority of local health departments to adopt and promulgate local health department rules; requiring that local health department rules not acted upon by a county commission or appointing authority within 30 days of their issuance become void; exempting from the aforementioned 30-day provision local health department rules in effect on or before March 4, 2021, clarifying that a local health department rule issued in response to an imminent public health emergency may have immediate force and effect subject to the provisions of law related to review and longevity of local health department rules; clarifying that orders of the Secretary of the Department of Health and Human Resources related to public health are state rules for enforcement purposes; clarifying that local health officers have the authority to enforce state rules, local rules, and local health department rules; and clarifying local health officers’ authority to engage in enforcement activities, issue guidance, and orders.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 2. LOCAL BOARDS OF HEALTH.**

**§16-2-2. Definitions.**

Unless the context in which used clearly requires a different meaning, as used in this article:

“Appointing authority” means the county commission or municipality, or combination thereof, that authorized the creation or combination of the local board of health, in whatever form it presently exists;

“Basic public health services” means those services that are necessary to protect the health of the public and that a local board of health must provide. The three areas of basic public health services are communicable and reportable disease prevention and control, community health promotion, and environmental health protection;

“Bureau” means the Bureau for Public Health in the Department of Health and Human Resources;

“Clinical and categorical programs” means those services provided to individuals of specified populations and usually focus on health promotion or disease prevention. These services are not considered comprehensive health care but focus on specific health issues such as breast and cervical cancer, prenatal and pediatric health services, and home health services;

“Combined local board of health” is one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

“Commissioner” means the Commissioner of the Bureau for Public Health, who is the state health officer;

“Communicable and reportable disease prevention and control” is one of three areas of basic public health services each local board of health must offer. Services shall include disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis, and other communicable and reportable diseases;

“Community health promotion” is one of three areas of basic public health services each local board of health must offer. Services shall include assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community’s priority health needs, mobilization of a community around identified priorities, and monitoring the progress of community health education services;

“County board of health” is one form of organization for a local board of health and means a local board of health serving a single county;

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

“Director” or “director of health” means the state health officer. Administratively within the department, the Bureau for Public Health through its commissioner carries out the public health function of the department, unless otherwise assigned by the secretary;

"Enforcement activity" means the implementation or enforcement of applicable state rules, local rules, and local health department rules;

“Enhanced public health services” means services that focus on health promotion activities to address a major health problem in a community, are targeted to a particular population and assist individuals in this population to access the health care system, such as lead and radon abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services are services a local health department may offer;

“Environmental health protection” is one of three areas of basic public health services each local board of health must offer. Services shall include efforts to protect the community from environmental health risks including, inspection of housing, institutions, recreational facilities, sewage, and wastewater facilities; inspection and sampling of drinking water facilities; and response to disease outbreaks or disasters;

"Guidance" means providing advice to a person, the public, a business, school board, or governmental entity regarding a public health issue or matter. Guidance is not a health order;

"Health order" means an order issued by the local health officer or local health board to protect the public health of the citizens by directing an individual or a discreet group of individuals to take a specific action to protect the health of the public or stop the spread of a communicable disease;

"Imminent public health emergency" means any immediate acute threat, hazard, or danger to the health of the population of the jurisdiction, whether specific or general, whether or not officially declared;

“Local board of health”, “local board”, or “board” means a board of health serving one or more counties or one or more municipalities or a combination thereof;

“Local health department” means the staff of the local board of health;

"Local health department rule" means a rule issued by the local board of health that has been approved by the appointing authority or was adopted prior to March 4, 2021, or a rule issued by the local board of health that may immediately go into effect because of an imminent public health emergency under §16-2-1(b)(3)(H) of this code;

“Local health officer” means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the commissioner;

"Local rule" means an order adopted by a county commission or an ordinance adopted by a city that properly directs the local health department to implement or enforce the order or ordinance;

“Municipal board of health” is one form of organization for a local board of health and means a board of health serving a single municipality;

“Performance-based standards” means generally accepted, objective standards such as rules or guidelines against which a local health department’s level of performance can be measured;

“Primary care services” means health care services, including medical care, that emphasize first contact patient care and assume overall and ongoing responsibility for the patient in health maintenance and treatment of disease. Primary care services are services that local boards of health may offer if the board has determined that an unmet need for primary care services exists in its service area. Basic public health services funding may not be used to support these services;

“Program plan” or “plan of operation” means the annual plan for each local board of health that must be submitted to the commissioner for approval;

“Secretary” means the Secretary of the Department of Health and Human Resources; and

“Service area” means the territorial jurisdiction of the local board of health; and

"State Rule" means a state statute, legislative rule promulgated by a state agency or an order of the secretary relating to public health that is to be enforced by a local health department.

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

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

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

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

(ii) Environmental health protection including the promoting and maintaining of clean and safe air, water, food, and facilities, and the administering of public health laws as specified by the commissioner as to general sanitation, the sanitation of public drinking water, sewage and wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

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

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

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

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

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

(6) Deposit all moneys and collected fees into an account designated for local board of health purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury in the service area. The moneys for a county board of health shall be deposited with the county treasury in the service area. The moneys for a combined local board of health shall be deposited in an account as designated in the plan of combination: *Provided*, That nothing contained in this subsection is intended to conflict with the provisions of §16-1-1 et seq. of this code;

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

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

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

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

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

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

(2) Employ or contract with any technical, administrative, clerical, or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the Division of Personnel under §29-10-6 of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

(3) (A) Adopt and promulgate and from time to time amend local health department rules consistent with state rules, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation, and spread of disease.

(B) The commissioner shall establish a procedure by which adverse determinations by local health departments may be appealed, unless otherwise provided for, for the purpose of ensuring a consistent interpretation of state rules.

(C) When local health department rules are adopted, promulgated, or amended, the local board of health shall place notice in the State Register and on their organization’s web page setting forth a notice of proposed action, including the text of the new local health department rule or the amendment and the date, time, and place for receipt of public comment.

(D) All local health department rules shall be approved, disapproved, or amended and approved by the county commission or appointing authority within 30 days of approval from the local board of health, and any local health department rule on which the appointing authority has taken no action within 30 days shall be void: *Provided,* That a local health department rule issued in response to an imminent public health emergency under the provisions of paragraph (H) of this subdivision may have immediate force and effect subject to the limitations set forth therein.

(E) All local health department rules of a combined local board of health shall be approved, disapproved, or amended and approved by each appointing authority within 30 days of approval from the combined local board of health. If one appointing authority approves and another other does not approve a local health department rule from a combined local board health department, the local health department rule is only in effect in the jurisdiction of the appointing authority which approved the local health department rule: *Provided,* That a local health department rule issued in response to an imminent public health emergency under the provisions of paragraph (H) of this subdivision may have immediate force and effect subject to the limitations set forth therein.

(F) An approved local health department rule shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality, or both, and shall be kept by the clerk or recording officer in a separate book as public records.

(G) A local health department rule currently in effect on March 4, 2021, is not subject to approval, unless amended, from the county commission or appointing authority.

(H) If there is an imminent public health emergency, approval of the county commission or appointing authority is not necessary before a local health department rule goes into effect but shall be approved or disapproved by the county commission or appointing authority within 30 days after the local health department rules are effective, and any rule on which the appointing authority has taken no action within 30 days shall be void;

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

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

(6) Assess, charge, and collect fees for services provided by the local health department: *Provided*, That fees for services shall be submitted to and approved by the commissioner: *Provided, however*, That a local health department may bill health care service fees to a payor which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization, and the Public Employees Insurance Agency for medical services provided: *Provided further*, That health care service fees billed by a local health department are not subject to commissioner approval and may be at the payor’s maximum allowable rate;

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

(8) Retain and make available child safety car seats, collect rental and security deposit fees for the expenses of retaining and making available child safety car seats, and conduct public education activities concerning the use and preventing the misuse of child safety car seats: *Provided*, That this subsection is not intended to conflict with the provisions of §17C-15-46 of this code: *Provided, however*, That any local board of health offering a child safety car seat program or employee or agent of a local board of health is immune from civil or criminal liability in any action relating to the improper use, malfunction, or inadequate maintenance of the child safety car seat and in any action relating to the improper placement, maintenance, or securing of a child in a child safety car seat.

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

(d) If the Governor declares a statewide public health emergency, the state health officer may develop emergency policies and guidelines that each of the local health departments responding to the emergency must comply with in response to the public health emergency.

**§16-2-13. Local health officer; powers and duties.**

(a) A local health officer serves as the executive officer of the local board and under its supervision, a local health officer shall administer and enforce state rules, local rules and local health department rules within the local board of health’s service area.

(b) A local health officer has the following additional powers and duties which may be delegated with the approval of the board:

(1) To attend local board meetings as a nonvoting member. A local health officer serves as secretary at all board meetings and is responsible for maintaining the boards offices, meeting minutes and records;

(2) To supervise and direct the activities of the local boards health services, employees and facilities;

(3) To ensure that procedures are established for the receipt of communicable or reportable disease reports from local physicians and other reporting sources and for the transmittal of the reports to the commissioner;

(4) To perform mandatory HIV tests on persons convicted of sex-related offenses and resident within the service area; and

(5) To determine when sufficient corrections have been made to warrant removal of any restrictions or limitations placed on an individual or entity for public health purposes by an employee of the local board of health.

(c) A local health officer shall perform enforcement activity.

(d) A local health officer may issue guidance.

(e) A local health officer may issue a health order.