

9

SB 170

FILED

2006 MAR 22 P 2:15

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
Regular Session, 2006



ENROLLED

Committee Substitute for

SENATE BILL NO. 170

(By Senators Tomblin, Mr. President, and +
S Prouse, by request of the Executive)



PASSED MARCH 9, 2006

In Effect 90 Days From Passage

FILED

2006 MAR 22 P 2: 15

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 170

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-29G-1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7 and §16-29G-8, all relating to the establishment of the West Virginia Health Information Network; establishing purpose of the network; setting up a board of directors; establishing membership of the board; terms of office of the board; permitting promulgation of legislative rules; establishing the powers and duties of the network; setting up a special revenue account; immunity from liability; property rights; dispute resolution; and confidentiality and privacy of records.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-29G-1,

§16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7 and §16-29G-8, all to read as follows:

ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.

§16-29G-1. Purpose.

1 (a) The purpose of this article is to create the West
2 Virginia Health Information Network under the oversight
3 of the Health Care Authority to promote the design,
4 implementation, operation and maintenance of a fully
5 interoperable statewide network to facilitate public and
6 private use of health care information in the state.

7 (b) It is intended that the network be a public-private
8 partnership for the benefit of all of the citizens of this
9 state.

10 (c) The network is envisioned to support and facilitate
11 the following types of electronic transactions or activities:

12 (1) Automatic drug-drug interaction and allergy alerts;

13 (2) Automatic preventive medicine alerts;

14 (3) Electronic access to the results of laboratory, X-ray,
15 or other diagnostic examinations;

16 (4) Disease management;

17 (5) Disease surveillance and reporting;

18 (6) Educational offerings for health care providers;

19 (7) Health alert system and other applications related to
20 homeland security;

21 (8) Links to evidence-based medical practice;

22 (9) Links to patient educational materials;

23 (10) Medical record information transfer to other
24 providers with the patient's consent;

25 (11) Physician order entry;

26 (12) Prescription drug tracking;

27 (13) Registries for vital statistics, cancer, case manage-
28 ment, immunizations and other public health registries;

29 (14) Secured electronic consultations between providers
30 and patients;

31 (15) A single-source insurance credentialing system for
32 health care providers;

33 (16) Electronic health care claims submission and
34 processing; and

35 (17) Any other electronic transactions or activities as
36 determined by legislative rules promulgated pursuant to
37 this article.

38 (d) The network shall ensure the privacy of patient
39 health care information.

**§16-29G-2. Creation of West Virginia Health Information Net-
work board of directors; powers of the board of
directors.**

1 (a) The network is created under the Health Care Au-
2 thority for administrative, personnel and technical support
3 purposes. The network shall be managed and operated by
4 a board of directors. The board of directors is an inde-
5 pendent, self-sustaining board with the powers specified
6 in this article.

7 (b) The board is part-time. Each member shall devote
8 the time necessary to carry out the duties and obligations
9 of members on the board.

10 (c) Members appointed by the Governor may pursue and
11 engage in another business or occupation or gainful
12 employment that is not in conflict with his or her duties as
13 a member of the board.

14 (d) The board shall meet at such times as the chair may
15 decide. Eight members of the board are a quorum for the

16 purposes of the transaction of business and for the perfor-
17 mance of any duty.

18 (e) A majority vote of the members present is required
19 for any final determination by the board. Voting by proxy
20 is not allowed.

21 (f) The Governor may remove any board member for
22 incompetence, misconduct, gross immorality, misfeasance,
23 malfeasance or nonfeasance in office.

24 (g) The board shall consist of seventeen members,
25 designated as follows:

26 (1) The Dean of the West Virginia University School of
27 Medicine or his or her designee;

28 (2) The Dean of the Marshall University John C. Ed-
29 wards School of Medicine or his or her designee;

30 (3) The President of the West Virginia School of Osteo-
31 pathic Medicine or his or her designee;

32 (4) The Secretary of the Department of Health and
33 Human Resources or his or her designee;

34 (5) The President of the West Virginia Board of Phar-
35 macy or his or her designee;

36 (6) The Director of the Public Employees Insurance
37 Agency or his or her designee;

38 (7) The Chief Technology Officer of the Office of Tech-
39 nology or his or her designee;

40 (8) The Chair of the Health Care Authority or his or her
41 designee;

42 (9) The President of the West Virginia Hospital Associa-
43 tion or his or her designee;

44 (10) The President of the West Virginia State Medical
45 Association or his or her designee;

46 (11) The Chief Executive Officer of the West Virginia
47 Health Care Association or his or her designee;

48 (12) The Executive Director of the West Virginia Primary
49 Care Association or his or her designee; and

50 (13) Five public members that serve at the will and
51 pleasure of the Governor and are appointed by the Gover-
52 nor with advice and consent of the Senate as follows:

53 (i) One member with legal expertise in matters concern-
54 ing the privacy and security of health care information;

55 (ii) Two physicians actively engaged in the practice of
56 medicine in the state;

57 (iii) One member engaged in the business of health
58 insurance who is employed by a company that has its
59 headquarters in West Virginia; and

60 (iv) The chief executive officer of a West Virginia
61 corporation working with West Virginia health care
62 providers, insurers, businesses and government to facili-
63 tate the use of information technology to improve the
64 quality, efficiency and safety of health care for West
65 Virginians.

66 (h) The Governor shall appoint one of the board mem-
67 bers to serve as chair of the board at the Governor's will
68 and pleasure. The board shall annually select one of its
69 members to serve as vice chair. The Chair of the Health
70 Care Authority shall serve as the secretary-treasurer of the
71 board.

72 (i) The public members of the board shall serve a term of
73 four years and may serve two consecutive terms. At the
74 end of a term, a member of the board shall continue to
75 serve until a successor is appointed. Those members
76 designated in subdivisions (1) through (12), inclusive,
77 subsection (g) of this section shall serve on the board only
78 while holding the position that entitle them to membership
79 on the board.

80 (j) The board may propose the adoption or amendment of
81 rules to the Health Care Authority to carry out the objec-
82 tives of this article.

83 (k) The board may appoint committees or subcommittees
84 to investigate and make recommendations to the full
85 board. Members of such committees or subcommittees
86 need not be members of the board.

87 (l) Each member of the board and the board's commit-
88 tees and subcommittees is entitled to be reimbursed for
89 actual and necessary expenses incurred for each day or
90 portion thereof engaged in the discharge of official duties
91 in a manner consistent with guidelines of the Travel
92 Management Office of the Department of Administration.

§16-29G-3. Powers and duties.

1 The network shall have the following duties:

2 (1) To develop a community-based health information
3 network to facilitate communication of patient clinical
4 and financial information designed to:

5 (A) Promote more efficient and effective communication
6 among multiple health care providers, including, but not
7 limited to, hospitals, physicians, payers, employers,
8 pharmacies, laboratories and other health care entities;

9 (B) Create efficiencies in health care costs by eliminating
10 redundancy in data capture and storage and reducing
11 administrative, billing and data collection costs;

12 (C) Create the ability to monitor community health
13 status; and

14 (D) Provide reliable information to health care consum-
15 ers and purchasers regarding the quality and cost-effec-
16 tiveness of health care, health plans and health care
17 providers;

18 (2) To develop or design other initiatives in furtherance
19 of the network's purpose;

20 (3) To report and make recommendations to the Health
21 Care Authority.

22 The network is granted all other incidental powers,
23 including, but not limited to, the following:

24 (A) Make and enter into all contracts and agreements
25 and execute all instruments necessary or incidental to the
26 performance of its duties and the execution of its powers,
27 subject to the availability of funds: *Provided*, That the
28 provisions of article three, chapter five-a of this code do
29 not apply to the agreements and contracts executed under
30 the provisions of this article;

31 (B) Acquire by gift or purchase, hold or dispose of real
32 and personal property in the exercise of its powers and
33 performance of its duties as set forth in this article;

34 (C) Receive and dispense funds appropriated for its use
35 by the Legislature or other funding sources or solicit,
36 apply for and receive any funds, property or services from
37 any person, governmental agency or organization to carry
38 out its statutory duties;

39 (D) Represent the state with respect to national health
40 information network initiatives;

41 (E) Perform any and all other activities in furtherance of
42 its purpose or as directed by the Health Care Authority.

**§16-29G-4. Creation of the West Virginia Health Information
Network account; authorization of Health Care
Authority to expend funds to support the net-
work.**

1 (a) All moneys collected shall be deposited in a special
2 revenue account in the State Treasury known as the West
3 Virginia Health Information Network Account. Expendi-
4 tures from the fund shall be for the purposes set forth in
5 this article and are not authorized from collections but are
6 to be made only in accordance with appropriation by the
7 Legislature and in accordance with the provisions of

8 article three, chapter twelve of this code and upon fulfill-
9 ment of the provisions of article two, chapter eleven-b of
10 this code: *Provided*, That for the fiscal year ending the
11 thirtieth day of June, two thousand seven, expenditures
12 are authorized from collections rather than pursuant to
13 appropriations by the Legislature.

14 (b) Consistent with section eight, article twenty-nine-b
15 of this chapter, the Health Care Authority's provision of
16 administrative, personnel, technical and other forms of
17 support to the network is necessary to support the activi-
18 ties of the Health Care Authority board and constitutes a
19 legitimate, lawful purpose of the Health Care Authority
20 board. Therefore, the Health Care Authority is hereby
21 authorized to expend funds from its Health Care Cost
22 Review Fund, established under section eight, article
23 twenty-nine-b of this chapter, to support the network's
24 administrative, personnel and technical needs and any
25 other network activities the Health Care Authority deems
26 necessary.

§16-29G-5. Immunity from suit; limitation of liability.

1 The network is not a health care provider and is not
2 subject to claims under article seven-b, chapter fifty-five
3 of this code. No person who participates or subscribes to
4 the services or information provided by the network is
5 liable in any action for damages or costs of any nature, in
6 law or equity, which result solely from that person's use or
7 failure to use network information or data that was
8 imputed or retrieved in accordance with the Health
9 Insurance Portability and Accountability Act of 1996 and
10 any amendments and regulations under the act, state
11 confidentiality laws and the rules of the network as
12 approved by the Health Care Authority. In addition, no
13 person is subject to antitrust or unfair competition liabil-
14 ity based on membership or participation in the network,
15 which provides an essential governmental function for the
16 public health and safety and enjoys state action immunity.

§16-29G-6. Property rights.

1 (a) All persons providing information and data to the
2 network shall retain a property right in that information
3 or data, but grant to the other participants or subscribers
4 a nonexclusive license to retrieve and use that information
5 or data in accordance with the Health Insurance Portabil-
6 ity and Accountability Act of 1996 and any amendments
7 and regulations under the act, state confidentiality laws
8 and the rules proposed by the Health Care Authority.

9 (b) All processes or software developed, designed or
10 purchased by the network shall remain its property subject
11 to use by participants or subscribers in accordance with
12 the rules or regulations proposed by the Health Care
13 Authority.

**§16-29G-7. Legislative rule-making authority; resolution of
disputes.**

1 (a) The Health Care Authority is hereby authorized to
2 propose rules under and pursuant to article twenty-nine-b
3 of this chapter to carry out the objectives of this article.

4 (b) To resolve disputes under this article or the rules
5 proposed herein among participants, subscribers or the
6 public, the Health Care Authority is hereby authorized to
7 conduct hearings and render decisions under and pursuant
8 to section twelve, article twenty-nine-b of this chapter.

§16-29G-8. Privacy; protection of information.

1 (a) The Health Care Authority shall ensure that patient
2 specific protected health information be disclosed only in
3 accordance with the patient's authorization or best
4 interest to those having a need to know, in compliance
5 with state confidentiality laws and the Health Insurance
6 Portability and Accountability Act of 1996 and any
7 amendments and regulations under the act.

Enr. Com. Sub. for S. B. No. 170] 10

8 (b) The health information, data and records of the
9 network shall be exempt from disclosure under the
10 provisions of chapter twenty-nine-b of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Candy White
.....
Chairman Senate Committee

R. B. ...
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harrell Elkins
.....
Clerk of the Senate

Suzanne M. ...
.....
Clerk of the House of Delegates

Carl ...
.....
President of the Senate

Robert ...
.....
Speaker House of Delegates

The within *is approved* this the *22nd*
Day of *March* 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2006

Time 11:10am