

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]

1 AN ACT to amend and reenact §16-2-2, §16-2-11, and §16-2-13 of the Code of West Virginia,
2 1931, as amended, all relating to local boards of health; defining terms including
3 “enforcement activity”, “enhanced public health services”, “guidance”, “health order”, “local
4 health department rule”, “local rule”, and “state rule”; clarifying the authority of local health
5 departments to adopt and promulgate local health department rules; requiring that local
6 health department rules not acted upon by a county commission or appointing authority
7 within 30 days of their issuance become void; exempting from the aforementioned 30-day
8 provision local health department rules in effect on or before March 4, 2021, clarifying that
9 a local health department rule issued in response to an imminent public health emergency
10 may have immediate force and effect subject to the provisions of law related to review and
11 longevity of local health department rules; clarifying that orders of the Secretary of the
12 Department of Health and Human Resources related to public health are state rules for
13 enforcement purposes; clarifying that local health officers have the authority to enforce
14 state rules, local rules, and local health department rules; and clarifying local health
15 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.

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

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

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

9 health promotion, and environmental health protection;

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

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

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

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

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

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

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

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

34 “Director” or “director of health” means the state health officer. Administratively within the

35 department, the Bureau for Public Health through its commissioner carries out the public health
36 function of the department, unless otherwise assigned by the secretary;

37 “Enforcement activity” means the implementation or enforcement of applicable state rules,
38 local rules, and local health department rules;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 “State Rule” means a state statute, legislative rule promulgated by a state agency or an
88 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.

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
29 commissioner, a public health emergency exists or when the local board fails or refuses to enforce
30 public health laws and rules necessary to prevent and control the spread of a communicable or
31 reportable disease dangerous to the public health. The expenses incurred shall be charged
32 against the 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 §16-1-1 *et seq.* of this
39 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
56 serve 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 §29-10-6 of this code. However, any local board of health may, in the
60 alternative and with the consent and approval of the appointing authority, establish and adopt a
61 merit system for its eligible employees. The merit system may be similar to the state merit system
62 and may be established by the local board by its order, subject to the approval of the appointing
63 authority, adopting and making applicable to the local health department all, or any portion of any
64 order, rule, standard, or compensation rate in effect in the state merit system as may be desired
65 and as is properly applicable;

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

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

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

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

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

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

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

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

100 (4) Accept, receive, and receipt for money or property from any federal, state, or local
101 governmental agency, from any other public source or from any private source, to be used for

102 public health purposes or for the establishment or construction of public health facilities;

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

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

125 (7) Contract for payment with any municipality, county, or board of education, for the
126 provision of local health services or for the use of public health facilities. Any contract shall be in
127 writing and permit provision of services or use of facilities for a period not to exceed one fiscal

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

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

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

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

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

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

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

6 (1) To attend local board meetings as a nonvoting member. A local health officer serves
7 as secretary at all board meetings and is responsible for maintaining the board's offices, meeting

8 minutes and records;

9 (2) To supervise and direct the activities of the local board's health services, employees
10 and facilities;

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

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

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

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

20 (d) A local health officer may issue guidance.

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

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

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Member, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2021.

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Governor