

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2015

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[Originating in the Committee on Health and Human
Resources; Reported on February 11, 2021]

1 A BILL to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended, relating
2 to local health department; requiring rules of local boards of health to be approved by the
3 appointing entity; providing exemptions; and requiring the state health officer to take
4 control of a local health department when the Governor declares a state of emergency.

Be it enacted by the Legislature of West Virginia:

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 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 commissioner,
29 a public health emergency exists or when the local board fails or refuses to enforce public health
30 laws and rules necessary to prevent and control the spread of a communicable or reportable
31 disease dangerous to the public health. The expenses incurred shall be charged against the
32 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
35 municipal treasury in the service area. The moneys for a county board of health shall be deposited
36 with the county treasury in the service area. The moneys for a combined local board of health
37 shall be 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 article one, chapter
39 sixteen of this 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 serve
56 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) Adopt and promulgate and from time to time amend rules consistent with state public
67 health laws and the rules of the West Virginia State Department of Health and Human Resources,
68 that are necessary and proper for the protection of the general health of the service area and the
69 prevention of the introduction, propagation and spread of disease. All rules shall be approved by
70 the county commission or appointing entity and then filed with the clerk of the county commission

71 or the clerk or the recorder of the municipality or both, and shall be kept by the clerk or recording
72 officer in a separate book as public records: Provided, That a rule currently in effect is not subject
73 to approval from the county commission or appointing entity. If there is an imminent public health
74 emergency approval by the county commission or appointing entity is not necessary before the
75 rule goes into effect, but shall be approved within thirty days by the county commission or
76 appointing entity;

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

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

95 (6) Assess, charge and collect fees for services provided by the local health department:
96 *Provided, That fees for services shall be submitted to and approved by the commissioner:*

97 *Provided, however,* That a local health department may bill health care service fees to a payor
98 which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization and the
99 Public Employees Insurance Agency for medical services provided: *Provided further,* That health
100 care service fees billed by a local health department are not subject to commissioner approval
101 and may be at the payor's maximum allowable rate.

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

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

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

120 (d) If the Governor declares a statewide state of emergency for health, the local board of
121 health in the county in which the emergency is declared, the state health officer is in control and

- 122 has authority over local boards of health. If the state of emergency for health is not statewide
123 local boards of health retain control and authority.

NOTE: The purpose of this bill is to require approval by the county commission or appointing entity of local board of health rules, except in certain cases of emergency.

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