

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4113

BY DELEGATES ROHRBACH, SUMMERS, D. JEFFRIES,
TULLY, G. WARD, BATES, REED, WORRELL, ROWAN, AND
MALLOW

[Passed March 10, 2022; in effect from passage.]

1 AN ACT to repeal §16-1-8, §16-1-13 and §16-1-21 of the Code of West Virginia, 1931, as
2 amended; to amend and reenact §16-1-2, §16-1-3, §16-1-4, §16-1-5, §16-1-6, §16-1-7,
3 §16-1-10, §16-1-11, §16-1-12 and §16-1-14 of said code; and to amend and reenact §16-
4 2-2, §16-2-10, §16-2-11, §16-2-12, §16-2-13 and §16-2-14 of said code; all relating to
5 public health; permitting the secretary to appoint advisory councils; allowing the secretary
6 of the Department of Public Health to propose legislative rules; requiring the commissioner
7 of the Bureau of Public Health to establish a Center for Local Public Health; creating
8 powers for the center; permitting local boards of health to provide immunizations and
9 threat preparedness; and repealing obsolete areas of code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

1 As used in this article:

2 (1) "Basic public health services" means those services that are necessary to protect the
3 health of the public;

4 (2) "Bureau" means the Bureau for Public Health in the department;

5 (3) "Combined local board of health" means one form of organization for a local board of
6 health and means a board of health serving any two or more counties or any county or counties
7 and one or more municipalities within or partially within the county or counties;

8 (4) "Commissioner" means the commissioner of the bureau, who is the state health officer;

9 (5) "County board of health" means one form of organization for a local board of health
10 and means a local board of health serving a single county;

11 (6) "Department" means the West Virginia Department of Health and Human Resources;

12 (7) "Director" or "director of health" means the state health officer. Administratively within
13 the department, the bureau through its commissioner carries out the public health functions of the
14 department, unless otherwise assigned by the secretary;

15 (8) “Essential public health services” means the core public health activities necessary to
16 promote health and prevent disease, injury, and disability for the citizens of the state. The services
17 include:

18 (A) Monitoring health status to identify community health problems;

19 (B) Diagnosing and investigating health problems and health hazards in the community;

20 (C) Informing, educating, and empowering people about health issues;

21 (D) Mobilizing community partnerships to identify and solve health problems;

22 (E) Developing policies and plans that support individual and community health efforts;

23 (F) Enforcing laws and rules that protect health and ensure safety;

24 (G) Uniting people with needed personal health services and assuring the provision of
25 health care when it is otherwise not available;

26 (H) Promoting a competent public health and personal health care workforce;

27 (I) Evaluating the effectiveness, accessibility, and quality of personal and population-
28 based health services; and

29 (J) Researching for new insights and innovative solutions to health problems;

30 (9) “Local board of health”, “local board”, or “board” means a board of health serving one
31 or more counties or one or more municipalities or a combination thereof;

32 (10) “Local health department” means the staff of the local board of health;

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

37 (12) “Municipal board of health” means one form of organization for a local board of health
38 and means a board of health serving a single municipality;

39 (13) “Performance-based standards” means generally accepted, objective standards such
40 as rules or guidelines against which public health performance can be measured;

41 (14) "Potential source of significant contamination" means a facility or activity that stores,
42 uses, or produces substances or compounds with potential for significant contaminating impact if
43 released into the source water of a public water supply;

44 (15) "Public groundwater supply source" means a primary source of water supply for a
45 public water system which is directly drawn from a well, underground stream, underground
46 reservoir, underground mine, or other primary source of water supplies which is found underneath
47 the surface of the state;

48 (16) "Public surface water supply source" means a primary source of water supply for a
49 public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or
50 other primary sources of water supplies which are found on the surface of the state;

51 (17) "Public surface water influenced groundwater supply source" means a source of water
52 supply for a public water system which is directly drawn from an underground well, underground
53 river or stream, underground reservoir, or underground mine, and the quantity and quality of the
54 water in that underground supply source is heavily influenced, directly or indirectly, by the quantity
55 and quality of surface water in the immediate area;

56 (18) "Public water system" means:

57 (A) Any water supply or system which regularly supplies or offers to supply water for
58 human consumption through pipes or other constructed conveyances, if serving at least an
59 average of 25 individuals per day for at least 60 days per year, or which has at least 15 service
60 connections, and shall include:

61 (i) Any collection, treatment, storage, and distribution facilities under the control of the
62 owner or operator of the system and used primarily in connection with the system; and

63 (ii) Any collection or pretreatment storage facilities not under such control which are used
64 primarily in connection with the system;

65 (B) A public water system does not include a system which meets all of the following
66 conditions:

67 (i) Consists only of distribution and storage facilities and does not have any collection and
68 treatment facilities;

69 (ii) Obtains all of its water from, but is not owned or operated by, a public water system
70 which otherwise meets the definition;

71 (iii) Does not sell water to any person; and

72 (iv) Is not a carrier conveying passengers in interstate commerce;

73 (19) "Public water utility" means a public water system which is regulated by the West
74 Virginia Public Service Commission pursuant to the provisions of §24-1-1 *et seq.* of this code;

75 (20) "Secretary" means the secretary of the department.

76 (21) "Service area" means the territorial jurisdiction of a local board of health;

77 (22) "Zone of critical concern" for a public surface water supply is a corridor along streams
78 within a watershed that warrant more detailed scrutiny due to its proximity to the surface water
79 intake and the intake's susceptibility to potential contaminants within that corridor. The zone of
80 critical concern is determined using a mathematical model that accounts for stream flows,
81 gradient, and area topography. The length of the zone of critical concern is based on a five-hour
82 time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below
83 the water intake. The width of the zone of critical concern is 1000 feet measured horizontally from
84 each bank of the principal stream and 500 feet measured horizontally from each bank of the
85 tributaries draining into the principal stream.

§16-1-3. Powers and duties of the secretary.

1 (a) The secretary may establish a state public health system.

2 (b) As necessary for the effective, efficient, and economical operation of the system, the
3 secretary may from time to time delegate, assign, transfer, or combine responsibilities or duties
4 to or among employees of the department.

5 (c) Within the limits of applicable federal law, the secretary may require every applicant
6 for a license, permit, certificate of registration, or registration under this chapter to place his or her
7 social security number on the application.

8 (d) The secretary may appoint advisory councils.

§16-1-4. Proposal of rules by the secretary.

1 (a) The secretary may propose legislative rules in accordance with the provisions of §29A-
2 3-1 *et seq.* of this code that include:

3 (1) Land usage endangering the public health: *Provided*, That no rules may be
4 promulgated or enforced restricting the subdivision or development of any parcel of land within
5 which the individual tracts, lots, or parcels exceed two acres each in total surface area and which
6 individual tracts, lots, or parcels have an average frontage of not less than 150 feet even though
7 the total surface area of the tract, lot, or parcel equals or exceeds two acres in total surface area,
8 and which tracts are sold, leased, or utilized only as single-family dwelling units. Notwithstanding
9 the provisions of this subsection, nothing in this section may be construed to abate the authority
10 of the department to:

11 (A) Restrict the subdivision or development of a tract for any more intense or higher density
12 occupancy than a single-family dwelling unit;

13 (B) Propose or enforce rules applicable to single-family dwelling units for single-family
14 dwelling unit sanitary sewerage disposal systems; or

15 (C) Restrict any subdivision or development which might endanger the public health, the
16 sanitary condition of streams, or sources of water supply;

17 (2) The sanitary condition of all institutions and schools, whether public or private, public
18 conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open
19 to the general public and inviting public patronage or public assembly, or tendering to the public
20 any item for human consumption and places where trades or industries are conducted;

21 (3) Occupational and industrial health hazards, the sanitary conditions of streams, sources
22 of water supply, sewerage facilities, and plumbing systems and the qualifications of personnel
23 connected with any of those facilities, without regard to whether the supplies or systems are
24 publicly or privately owned; and the design of all water systems, plumbing systems, sewerage
25 systems, sewage treatment plants, excreta disposal methods, and swimming pools in this state,
26 whether publicly or privately owned;

27 (4) Safe drinking water, including:

28 (A) The maximum contaminant levels to which all public water systems must conform in
29 order to prevent adverse effects on the health of individuals and, if appropriate, treatment
30 techniques that reduce the contaminant or contaminants to a level which will not adversely affect
31 the health of the consumer. The rule shall contain provisions to protect and prevent contamination
32 of wellheads and well fields used by public water supplies so that contaminants do not reach a
33 level that would adversely affect the health of the consumer;

34 (B) The minimum requirements for: sampling and testing; system operation; public
35 notification by a public water system on being granted a variance or exemption, or upon failure to
36 comply with specific requirements of this section and rules promulgated under this section; record
37 keeping; laboratory certification; as well as procedures and conditions for granting variances and
38 exemptions to public water systems from state public water systems rules; and

39 (C) The requirements covering the production and distribution of bottled drinking water
40 and may establish requirements governing the taste, odor, appearance, and other consumer
41 acceptability parameters of drinking water;

42 (5) Food and drug standards, including cleanliness, proscription of additives, proscription
43 of sale, and other requirements in accordance with §16-7-1 *et seq.* of this code as are necessary
44 to protect the health of the citizens of this state;

45 (6) The training and examination requirements for emergency medical service attendants
46 and emergency medical care technician-paramedics; the designation of the health care facilities,

47 health care services, and the industries and occupations in the state that must have emergency
48 medical service attendants and emergency medical care technician-paramedics employed, and
49 the availability, communications and equipment requirements with respect to emergency medical
50 service attendants and to emergency medical care technician-paramedics. Any regulation of
51 emergency medical service attendants and emergency medical care technician- paramedics may
52 not exceed the provisions of §16-4C-1 *et seq.* of this code;

53 (7) The health and sanitary conditions of establishments commonly referred to as bed and
54 breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment
55 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may
56 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer
57 rooms to install a restaurant-style or commercial food service facility. The secretary may not
58 require an owner of a bed and breakfast providing sleeping accommodations of more than six
59 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast
60 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

61 (8) Fees for services provided by the Bureau for Public Health including, but not limited to,
62 laboratory service fees, environmental health service fees, health facility fees, and permit fees;

63 (9) The collection of data on health status, the health system, and the costs of health care;

64 (10) The distribution of state aid to local health departments and basic public health
65 services funds in accordance with:

66 (A) Base allocation amount for each county;

67 (B) Establishment and administration of an emergency fund of no more than two percent
68 of the total annual funds of which unused amounts are to be distributed back to local boards of
69 health at the end of each fiscal year;

70 (C) A calculation of funds utilized for state support of local health departments;

71 (D) Distribution of remaining funds on a per capita weighted population approach which
72 factors coefficients for poverty, health status, population density, and health department

73 interventions for each county and a coefficient which encourages counties to merge in the
74 provision of public health services; and

75 (E) The provisions of this subdivision are in effect until the performance standard funding
76 formula is created and established by legislative rule.

77 (b) The secretary shall not review any repair or modernization of equipment at a public
78 pool facility as long as such activity does not change the scope of the facility or its current use
79 and such activity does not exceed \$25,000 in planned cost.

§16-1-5. State health officer; appointment; qualifications; term.

1 The Commissioner of the Bureau for Public Health is the state health officer and shall be
2 appointed by the secretary. The commissioner shall be licensed under the laws of this state to
3 practice medicine or a person holding a doctorate degree in public health administration. The
4 commissioner serves at the will and pleasure of the secretary and shall not be actively engaged
5 or employed in any other business, vocation, or employment, serving full-time in the duties of the
6 office as prescribed by this article.

§16-1-6. Powers and duties of the commissioner.

1 (a) The commissioner is the chief executive, administrative and fiscal officer of the Bureau
2 for Public Health and has the following powers and duties:

3 (1) To supervise and direct the fiscal and administrative matters of the bureau, and in that
4 regard and in accordance with law, employ, fix the compensation of, and discharge all persons
5 necessary for the proper execution of the public health laws of this state and the efficient and
6 proper discharge of the duties imposed upon, and execution of powers vested in the
7 commissioner by law and as directed by the secretary;

8 (2) To enforce all laws of this state concerning public health.

9 (3) To investigate the cause of disease, especially of epidemics and endemic conditions,
10 and the means of prevention, suppression, or control of those conditions; the source of sickness

11 and mortality, the effects of environment, employment, habits, and circumstances of life on the
12 public health.

13 (4) To inspect and examine food, drink, and drugs offered for sale or public consumption
14 in the manner the commissioner considers necessary to protect the public health and shall report
15 all violations of laws and rules relating to the law to the prosecuting attorney of the county in which
16 the violations occur;

17 (5) To make complaint or cause proceedings to be instituted against any person,
18 corporation, or other entity for the violation of any public health law before any court or agency,
19 without being required to give security for costs; the action may be taken without the sanction of
20 the prosecuting attorney of the county in which the proceedings are instituted or to which the
21 proceedings relate;

22 (6) To promote the provision of essential public health services to citizens of this state;

23 (7) To monitor the operation and coordination of the local boards of health and local health
24 officers;

25 (8) To develop and maintain a state plan of operation that sets forth the needs of the state
26 in the areas of public health; goals and objectives for meeting those needs; methods for achieving
27 the stated goals and objectives; and needed personnel, funds, and authority for achieving the
28 goals and objectives;

29 (9) To collect data as may be required to foster knowledge on the citizenry's health status,
30 the health system, and costs of health care;

31 (10) To delegate to any appointee, assistant, or employee any and all powers and duties
32 vested in the commissioner, including, but not limited to, the power to execute contracts and
33 agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the
34 acts of his or her appointees, assistants, and employees;

35 (11) To transfer any patient or resident between hospitals and facilities and, by agreement
36 with the state Commissioner of Corrections and Rehabilitation and otherwise in accord with law,

37 accept a transfer of a resident of a facility under the jurisdiction of the state Commissioner of
38 Corrections and Rehabilitation;

39 (12) To make periodic reports to the Governor and to the Legislature relative to specific
40 subject areas of public health, or other matters affecting the public health of the people of the state;

41 (13) To accept and use for the benefit of the health of the people of this state, any gift or
42 devise of any property or thing which is lawfully given: *Provided*, That if any gift is for a specific
43 purpose shall be used as specified. Any profit which may arise from any gift or devise of any
44 property or thing shall be deposited in a special revenue fund with the State Treasurer and shall
45 be used only as specified by the donor or donors;

46 (14) To acquire by condemnation or otherwise any interest, right, privilege, land, or
47 improvement and hold title to the land or improvement, for the use or benefit of the state or a state
48 hospital or facility, to sell, exchange or otherwise convey any interest, right, privilege, land, or
49 improvement acquired or held by the state, state hospital, or state facility Any condemnation
50 proceedings shall be conducted pursuant to §54-1-1 *et seq.* of this code;

51 (15) To inspect and enforce rules to control the sanitary conditions of and license all
52 institutions and health care facilities as set forth in this chapter, including, but not limited to,
53 schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,
54 factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places
55 open to the general public and inviting public patronage or public assembly, or tendering to the
56 public any item for human consumption and places where trades or industries are conducted;

57 (16) To make inspections, conduct hearings, and to enforce the legislative rules
58 concerning occupational and industrial health hazards, the sanitary condition of streams, sources
59 of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel
60 connected with the supplies, facilities or systems without regard to whether they are publicly or
61 privately owned; and to make inspections, conduct hearings and enforce the legislative rules
62 concerning the design of chlorination and filtration facilities and swimming pools;

63 (17) To provide in accordance with this subdivision for a program for the care, treatment,
64 and rehabilitation of the parents of sudden infant death syndrome victims; for the training and
65 employment of personnel to provide the requisite rehabilitation of parents of sudden infant death
66 syndrome victims; for the education of the public concerning sudden infant death syndrome; for
67 the education of police, employees, and volunteers of all emergency services concerning sudden
68 infant death syndrome; and for requesting appropriation of funds in both federal and state budgets
69 to fund the sudden infant death syndrome program;

70 (18) To establish and maintain a state hygienic laboratory as an aid in performing the
71 duties imposed upon the commissioner, and to employ employees that may be necessary to
72 properly operate the laboratory. The commissioner may establish branches of the state laboratory
73 within the state that are necessary in the interest of the public health;

74 (19) To expend, for the purpose of performing the public health duties imposed on the
75 bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may
76 make advance payments to public and nonprofit health services providers when the commissioner
77 determines it is necessary for the initiation or continuation of public health services. The advance
78 payments, being in derogation of the principle of payment only after receipt of goods or services,
79 shall be authorized only after serious consideration by the commissioner of the necessity of the
80 advance payments and shall be for a period no greater than 90 days in advance of rendition of
81 service or receipt of goods and continuation of health services;

82 (20) To exercise all other powers delegated to the commissioner by the secretary or by
83 this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities
84 necessary and incident to the authority and area of concern entrusted to the bureau or the
85 commissioner.

86 (b) The commissioner shall establish within the Bureau for Public Health, a Center for
87 Local Public Health. The center shall:

- 88 (1) Enhance the quality and availability of essential public health services throughout the
89 state provided by local boards of health;
- 90 (2) Provide technical assistance and consultation to a local board of health agency;
- 91 (3) Allocate and distribute funding based upon performance based standards;
- 92 (4) Provide technical assistance to the local public health workforce;
- 93 (5) Facilitate bi-directional communication;
- 94 (6) Establish a uniform state-wide computer system for the reporting of public health data;
- 95 (7) Inventory the services provided by a local boards of health;
- 96 (8) Support sharing of services between local boards of health;
- 97 (9) Create a performance-based evaluation system based on standards established by
98 legislative rule;
- 99 (10) Provide a quarterly training to ensure consistency in the application of state laws,
100 legislative rules, and local health department rules; and
- 101 (11) Enforce compliance with performance standards.

§16-1-7. Commissioner serving on advisory boards.

- 1 (a) The commissioner serves on the following advisory councils, boards, and
2 commissions:
- 3 (1) The Advisory Committee on Cancer (Cancer Registry);
- 4 (2) The Air Quality Board;
- 5 (3) The Appalachian States Low-level Radioactive Waste Commission;
- 6 (4) The Child Fatality Review Team;
- 7 (5) The Childhood Immunization Advisory Committee;
- 8 (6) The Early Intervention Coordinating Council;
- 9 (7) The Interagency Council on Osteoporosis;
- 10 (8) The Sewage Advisory Board;
- 11 (9) The State Emergency Response Commission;

- 12 (10) The State Groundwater Coordinating Committee;
- 13 (11) The Water Development Authority;
- 14 (12) The West Virginia Commission for the Deaf and Hard of Hearing;
- 15 (13) The West Virginia Infrastructure and Jobs Development Council; and
- 16 (14) Any other advisory council, board, or commission as assigned by the secretary except
- 17 for business, professional, or occupational licensing boards.

18 (b) The commissioner may, designate in writing a representative to serve in his or her
19 stead at the meetings and in the duties of all boards and commissions on which the commissioner
20 is designated as an ex officio member. The appropriately designated representative acts with the
21 full authority of the commissioner in voting, and other business that is properly the duty of any
22 board or commission. The representative serves at the commissioner's will and pleasure.

§16-1-8. Duties and powers of the commissioner; authorization to cooperate with any state health planning and development agencies and any federal government agencies in hospital and other health facility programs.

1 [Repealed].

§16-1-10. Disposition of permit, license, or registration fees received by the commissioner; report to Auditor; health facility licensing account.

1 (a) The commissioner shall receive and account for all moneys required to be paid as fees
2 to the bureau for permits, licenses, or registrations, pursuant to the provisions of this code and
3 legislative rules.

4 (b) Subject to the provisions set forth in §12-2-2 of this code, there is continued in the
5 State Treasury a separate account which shall be designated "the Health Facility Licensing
6 Account." The commissioner shall deposit to the Health Facility Licensing Account all health
7 facility licensing fees and may spend the moneys deposited in the health facility licensing account
8 in accordance with the laws of this state to implement activities of health facility licensing. As part

9 of the annual state budget, the Legislature shall appropriate for health facility licensure all moneys
10 deposited in the Health Facility Licensing Account.

11 Any remaining balance including accrued interest in the account at the end of any fiscal
12 year shall not revert to the General Revenue Fund, but shall remain in the account, and the
13 moneys may be spent after appropriation by the Legislature in ensuing fiscal years.

**§16-1-11. Disposition of fees for services charged and received by the commissioner;
health services fund.**

1 (a) The commissioner may assess and charge reasonable fees for the provision of
2 services provided by the bureau: *Provided*, That no individual may be denied health care services
3 by the bureau because of the inability of the individual to pay for services. The fees shall be
4 deposited into a special revolving fund in the State Treasury designated the "Health Services
5 Fund."

6 (b) Any balance including accrued interest in the special revolving fund at the end of any
7 fiscal year shall not revert to the General Revenue Fund but shall remain in the fund for use by
8 the commissioner for funding health programs in the ensuing fiscal years.

§16-1-12. Receipt and disbursement of federal aid and other moneys for health purposes.

1 (a) The commissioner may accept, receive, and receipt for federal moneys and other
2 moneys, either public or private, for and on behalf of this state or any county or municipality of
3 this state, for public health purposes, or for the establishment or construction of public health
4 facilities, whether the work is to be done by the state, or by the county or municipality, or jointly,
5 aided by grants of aid from the United States, upon such terms and conditions as are, or may be,
6 prescribed by the laws of the United States and regulations made thereunder. The commissioner
7 may act as the agent of the state or any of its agencies, or of any county or municipality of this
8 state, upon the request of any agency of the state or of any county or municipality, in accepting,
9 receiving and receipting for the moneys in its behalf, for public health facilities financed either, in
10 whole or in part, by federal moneys.

11 (b) The state, any agency of the state, or any county or municipality may, designate the
12 commissioner as its agent for the purposes set forth in subsection (a) of this section and the
13 agency, county, or municipality may enter into an agreement with the commissioner prescribing
14 the terms and conditions of the agency in accordance with federal laws and regulations, and with
15 the laws of this state. The moneys paid over by the United States government shall be retained
16 by the state or paid over to the counties or municipalities under the terms and conditions imposed
17 by the United States government in making the grants.

18 (c) All moneys accepted for disbursement pursuant to this section shall be deposited by
19 the commissioner in the State Treasury, and unless otherwise prescribed by the authority from
20 which the money is received, kept in separate funds, designated according to the purpose for
21 which the moneys were made available, and held by the state in trust for those purposes. All
22 moneys are hereby appropriated for the purposes for which the moneys were made available and
23 shall be expended in accordance with federal laws and regulations and with the laws of this state.
24 The commissioner may, whether acting for the state or one of its agencies, or as the agency for
25 any county or municipality, when requested by the United States government or any agency or
26 department of the United States government, or when requested by the state, a state agency, or
27 any county or municipality for which the moneys have been made available, disburse the moneys
28 for the designated purposes, but this shall not include any other authorized method of
29 disbursement.

§16-1-13. Hospital services revenue account; health facilities long-range plans.

1 [Repealed].

§16-1-14. Training of employees.

1 The commissioner may provide technical and specialized instruction for employees of the
2 bureau.

3 The commissioner may pay out of federal funds and such state funds as are available to
4 match such federal funds, any required tuition or enrollment fees.

§16-1-21. Creation of Diabetes Action Plan.

1 [Repealed].

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-2. Definitions.

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

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

5 “Basic public health services” means those services that are necessary to protect the
6 health of the public and that a local board of health must provide;

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

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

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

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

18 “Communicable and reportable disease prevention and control” means disease
19 surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and
20 prevention and control of communicable and reportable diseases;

21 “Community health promotion” mean assessing and reporting community health needs to
22 improve health status, facilitating community partnerships including identifying the community’s

23 priority health needs, mobilization of a community around identified priorities, and monitoring the
24 progress of community health education services;

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

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

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

30 “Enhanced public health services” means services that focus on health promotion
31 activities to address a major health problem in a community, are targeted to a particular population
32 and assist individuals in this population to access the health care system;

33 “Environmental health protection” means efforts to protect the community from
34 environmental health risks including, inspection of housing, institutions, recreational facilities,
35 sewage, and wastewater facilities; inspection and sampling of drinking water facilities; and
36 response to disease outbreaks or disasters;

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

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

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

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

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

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

53 “Local health officer” means the individual physician with a current West Virginia license
54 to practice medicine or a licensed advanced practice registered nurse that has the ability to
55 independently practice who supervises and directs the activities of the local health department
56 services, staff and facilities and is appointed by the local board of health;

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

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

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

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

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

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

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

§16-2-10. Local board of health; meetings; attendance; bylaws; quorum; chairperson selection, powers and duties.

1 (a) A local board of health shall meet as often as necessary to orderly and efficiently
2 execute its duties and exercise its powers but, no fewer than six times per year. Members of a
3 local board of health shall attend board meetings in compliance with attendance policies
4 established by its bylaws or rules.

5 (b) A local board of health shall adopt and may amend bylaws or rules governing the time
6 and place of its regular meetings, procedures, and method of conducting its meetings. A quorum
7 of the board for transacting business is a simple majority of the constituent membership of the
8 board.

9 (c) A local board of health, pursuant to its bylaws, shall elect from its members a
10 chairperson. The chairperson shall serve for a term of one year and may be reelected for
11 additional terms. The chairperson may, on behalf of the board, sign documents, execute
12 contracts, and otherwise act for and in the name of the board in all matters within its lawful powers
13 and as duly authorized by a majority of the board members.

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

1 (a) A local board of health created, established, and operated pursuant to the provisions
2 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 (A) 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 (B) 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 (C) 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 (D) Immunizations; and

18 (E) Threat preparedness.

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

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

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

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

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

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

46 (8) Enforce the public health laws of this state and any other laws of this state applicable
47 to the local board; and

48 (9) Create by rule a fee schedule, as approved by the appointing authority, for those
49 environmental services it provides that are not established by state code.

50 (b) A local board of health may:

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

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

62 order, rule, standard, or compensation rate in effect in the state merit system as may be desired
63 and as is properly applicable;

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

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

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

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

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

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

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

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

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

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

114 inspection of the physical plant and facilities in a regular schedule, the commissioner shall
115 designate one as the regular inspection agency;

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

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

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

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

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

**§16-2-12. Local health officer; term of appointment; qualifications; reappointment;
compensation; and removal.**

1 A local board of health shall appoint a full-time or part-time local health officer. The local
2 health officer shall be a physician or a licensed advanced practice registered nurse with the ability
3 to practice independently currently licensed in this state and knowledgeable in the science of
4 public health. A local health officer serves at the will and pleasure of the local board for a term of
5 one year and is eligible for reappointment at compensation determined by the local board of
6 health.

7 A local health officer may be removed from office by the commissioner if the local health
8 officer fails or refuses to carry out the lawful orders or rules of the secretary in the event the
9 commissioner determines a public health emergency exists or if the local health officer fails or
10 refuses to enforce public health laws and rules necessary to prevent and control the spread of
11 communicable or reportable diseases dangerous to the public health. Upon removal, a successor
12 local health officer shall immediately be appointed by the board pursuant to the provisions of this
13 article.

§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 which may be delegated with
5 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 and for the transmittal of the reports to the commissioner;

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

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

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

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

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

**§16-2-14. Financial responsibilities of appointing authorities for local boards of health;
levies; appropriation of county or municipal general funds for public health
purposes; state funding.**

1 The appointing authorities for local boards of health shall provide financial support for the
2 operation of the local health department. The county commission of any county or the governing
3 body of any municipality in which a local board of health is established, or the county commission
4 of any county or the governing body of any municipality who is a participating member of a
5 combined local board of health may levy a county or municipal tax to provide funds for the local
6 board of health: *Provided*, That the tax may not exceed 3 cents on each \$100 of assessed
7 valuation of the taxable property in the levying county or municipality, according to the latest
8 assessment.

9 The county commission of any county or the governing body of any municipality in which
10 a local board of health is established, or the county commission of any county or the governing
11 body of any municipality who is a participating member of a combined local board of health may
12 appropriate and spend money from the county or municipal general funds for public health
13 purposes and to pay the expenses of the operation of the local board of health services and
14 facilities.

15 The commissioner and the secretary may pay over and contribute to any board of health,
16 the sum or sums of money that may be available from funds included in appropriations made for
17 the department. The commissioner may withhold all or part of any funds until a local board of
18 health submits an acceptable plan to correct deficiencies in the local board's program plan.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2022.

.....
Governor