

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 273

FISCAL
NOTE

By Senators Trump, Woelfel, Plymale, and Rucker

[Introduced January 18, 2023; referred
to the Committee on Health and Human Resources;
and then to the Committee on Finance]

1 A BILL to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §9-6-11 of said code; to amend and reenact §49-1-106 of said code; to amend
3 and reenact §49-1-208 of said code; to amend and reenact §49-2-101 of said code; to
4 amend and reenact §49-2-102 of said code; and to amend said code by adding thereto a
5 new article, designated §49-10-101 and §49-10-102, all relating to child welfare; defining
6 terms; deleting requirement providing allocation child protective workers annually by
7 district; requiring the department to have a redundant system in the event of a centralized
8 intake outage; setting forth requirements for redundancy system; setting date system shall
9 be operational; requiring reporting regarding the description of system, date system
10 becomes operation, and an explanation calls to centralized intake when unanswered if
11 department contends it has existing redundant system; requiring reporting of statistical
12 information; designating Bureau for Social Services as the Bureau with the Department of
13 Health and Human Resources to administer the child welfare services in the state;
14 designating the Bureau for Social Services as the Bureau to cooperate with the United
15 States Department of Health and Human Services and Department of Justice in extending
16 and improving child welfare services in West Virginia; establishing the Bureau for Social
17 Services under the Department of Health and Human Resources; creating the office of the
18 commissioner; setting forth duties of the commissioner; setting forth organization of the
19 office; setting forth right of commissioner to supervise and hire staff; providing the
20 commissioner shall allocate child protective service workers in counties to the county
21 based upon population on the 2020 Census; providing that the Bureau for Social Services
22 shall develop a merit based system for specified employees, providing the merit based
23 system shall be subject to the grievance process, except that there is no grievance
24 available for the same classification description impacted by regional pay disparities;
25 providing for effective date; and providing for emergency and legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-6. Powers of secretary.

1 (a) Within limits of state appropriations and federal grants and subject to provisions of state
2 and federal laws and regulations, the secretary, in addition to all other powers, duties, and
3 responsibilities granted and assigned to that office in this chapter and elsewhere by law, may:

4 (1) Promulgate, amend, revise, and rescind department rules respecting the organization
5 and government of the department and the execution and administration of those powers, duties,
6 and responsibilities granted and assigned by this chapter and elsewhere by law to the department
7 and the secretary.

8 (2) Promulgate, amend, revise, and rescind department rules and regulations respecting
9 qualifications for receiving the different classes of welfare assistance consistent with or permitted
10 by federal laws, rules, and policies, but not inconsistent with state law: *Provided*, That rules and
11 policies respecting qualifications shall permit the expenditure of state funds to pay for care
12 rendered in any birthing center licensed under the provisions of §16-2E-1 *et seq.* of this code by a
13 licensed nurse midwife or midwife as this occupation is defined in §30-15-7 of this code and which
14 care is within the scope of duties for such licensed nurse midwife or midwife as permitted by §30-
15 15-7 of this code.

16 (3) Obtain by purchase or lease grounds, buildings, office, or other space, equipment,
17 facilities, and services as may be necessary for the execution and administration of those powers,
18 duties, and responsibilities granted and assigned by this chapter and elsewhere by law to the
19 department and the secretary.

20 (4) Sign and execute in the name of the state by the Department of Health and Human
21 Resources any contract or agreement with the federal government or its agencies, other states,

22 political subdivisions of this state, corporations, associations, partnerships, or individuals:
23 *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed.

24 (5) Sign and execute a contract to implement professional health care, managed care,
25 actuarial and health care-related monitoring, quality review/utilization, claims processing, and
26 independent professional consultant contracts for the Medicaid program: *Provided*, That the
27 provisions of §5A-3-1 *et seq.* of this code are followed: *Provided, however*, That a contract
28 awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains in
29 full force and effect and the secretary retains sole authority to review, approve, and issue changes
30 to contracts issued under the former purchasing process, and is responsible for challenges,
31 disputes, protests, and legal actions related to such contracts.

32 (6) Establish such special funds as may be required by the federal Social Security Act, as
33 amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of
34 the benefits and provisions thereof relating to the federal-state assistance and federal assistance
35 programs administered by the department and to make payments into and disbursements out of
36 any such special fund or funds in accordance with the requirements of the federal Social Security
37 Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state
38 law and the objects and purposes of this chapter. In addition, the Department of Health and
39 Human Resources, through the secretary, is hereby authorized to accept any and all gifts or
40 grants, whether in money, land, services, or materials, which gift or gifts, if in the form of moneys,
41 shall be placed in a separate fund and expended solely for the purpose of public assistance
42 programs. No part of this special fund may revert to the general revenue funds of this state. No
43 expenses incurred pursuant to this special fund may be a charge against the general funds of this
44 state.

45 (7) Establish within the department an Office of Inspector General for the purpose of
46 conducting and supervising investigations, performing inspections, evaluations, and review, and
47 providing quality control for the programs of the department. The Office of Inspector General shall

48 be headed by the Inspector General who shall report directly to the secretary. Neither the
49 secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector
50 General or his or her employees from initiating, carrying out, or completing any investigation,
51 inspection, evaluation, review, or other activity oversight of public integrity by the Office of the
52 Inspector General. The secretary shall place within the Office of Inspector General any function he
53 or she deems necessary. Qualification, compensation, and personnel practice relating to the
54 employees of the Office of the Inspector General, including that of the position of Inspector
55 General, shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and
56 rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of
57 Inspector General.

58 (8) Provide at department expense a program of continuing professional, technical, and
59 specialized instruction for the personnel of the department.

60 (9) Pay from available funds all or part of the reasonable expenses incurred by a person
61 newly employed by the department in moving his household furniture, effects, and immediate
62 family from his or her place of residence in this state to his or her place of employment in this state;
63 and to pay from available funds all or part of the reasonable expenses incurred by a department
64 employee in moving his or her household furniture, effects, and immediate family as a result of a
65 reassignment of the employee which is considered desirable, advantageous to and in the best
66 interests of the state, but no part of the moving expenses of any one such employee may be paid
67 more frequently than once in 12 months or for any movement other than from one place of
68 employment in this state to another place of employment in this state.

69 (10) Establish a program to provide reimbursement to employees of the department whose
70 items of personal property, as defined by the department by policy, are damaged during the course
71 of employment or other work-related activity as a result of aggressive behavior by a client or
72 patient receiving services from the department: *Provided*, That the reimbursement is limited to a
73 maximum amount of \$250 per claim.

74 (11) Establish and maintain such institutions as are necessary for the temporary care,
75 maintenance, and training of children and other persons.

76 (12) Prepare and submit state plans which will meet the requirements of federal laws, rules
77 governing federal-state assistance, and federal assistance, and which are not inconsistent with
78 state law.

79 (13) Organize within the department a board of review, consisting of a chairman appointed
80 by the secretary and as many assistants or employees of the department as may be determined
81 by the secretary and as may be required by federal laws and rules respecting state assistance,
82 federal-state assistance, and federal assistance, the board of review to have such powers of a
83 review nature and such additional powers as may be granted to it by the secretary and as may be
84 required by federal laws and rules respecting federal-state assistance and federal assistance.

85 (14) Provide by rules review and appeal procedures within the Department of Health and
86 Human Resources as may be required by applicable federal laws and rules respecting state
87 assistance, federal-state assistance, and federal assistance, and as will provide applicants for,
88 and recipients of, all classes of welfare assistance an opportunity to be heard by the board of
89 review, a member thereof, or individuals designated by the board, upon claims involving denial,
90 reduction, closure, delay, or other action or inaction pertaining to public assistance.

91 (15) Provide by rules, consistent with requirements of applicable federal laws and rules,
92 application forms and application procedures for the various classes of public assistance.

93 (16) Provide locations for making applications for the various classes of public assistance.

94 (17) Provide a citizen or group of citizens an opportunity to file objections and to be heard
95 upon objections to the grant of any class of public assistance.

96 (18) Delegate to the personnel of the department all powers and duties vested in the
97 secretary, except the power and authority to sign contracts and agreements.

98 (19) Make such reports in such form and containing such information as may be required
99 by applicable federal laws and rules respecting federal-state assistance and federal assistance.

100 (20) Invoke any legal, equitable, or special remedies for the enforcement of the provisions
101 of this chapter.

102 (21) Require a provider, subgrantee, or other entity performing services on behalf of the
103 department to comply with all applicable laws, rules, and written procedures pertaining to the
104 program for which the entity is providing or coordinating services, including, but not limited to,
105 policy manuals, statements of work, program instructions, or other similar agreements. When
106 submitting a claim for payment, the entity shall certify that it has complied with all material
107 conditions for payment. Knowingly and intentionally submitting a claim or billing for services
108 performed in material violation of any law, rule, policy, or other written agreement shall constitute
109 fraud and the agreement for provision of services shall terminate. The entity shall be required to
110 repay the department for any payment under the program for which the provider was not entitled,
111 regardless of whether the incorrect payment was the result of department error, fraud, or other
112 cause. A demand for repayment or termination of agreement for provision of services shall be
113 subject to the due process procedures pursuant to §29A-5-1 *et seq.* of this code. The provisions of
114 this subsection do not apply to fraud in the Medicaid program.

115 (22) Develop a data analytics pilot program to identify potential fraud and help guide policy
116 objectives to eliminate future fraud. The secretary shall submit a report containing the pilot
117 program's results and recommendations to the Joint Committee on Government and Finance no
118 later than December 31, 2020.

119 ~~(b) The secretary shall annually allocate Child Protective Services workers by districts of~~
120 ~~the Bureau for Social Services and report the allocation process to the Legislative Oversight~~
121 ~~Commission on Health and Human Resources Accountability by July 1 each year~~

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-11. Reporting procedures.

1 (a) A report of neglect, abuse, or financial exploitation of a vulnerable adult or facility
2 resident, or of an emergency situation involving such an adult, shall be made immediately, and not

3 more than 48 hours after suspecting abuse, neglect or financial exploitation, to the department's
4 adult protective services agency by a method established by the department. The department
5 shall, upon receiving any such report, take such action as may be appropriate and shall maintain a
6 record thereof. The department shall receive reports on its 24-hour, seven-day-a-week, toll-free
7 number established to receive calls reporting cases of suspected or known adult abuse or neglect.
8 The department shall have a redundancy for its system in the event of an outage to receive
9 reports. This redundancy shall be transparent meaning that it shall allow for reporting in the same
10 means as if the outage had not occurred and no time delay shall occur from when the outage
11 occurs to when the redundancy system begins to operate. This redundancy system shall be
12 operational no later than July 1, 2023. If the department contends that it currently has a
13 redundancy system, then it needs to describe this system, provide an operational date for the
14 system, and explain why calls to centralized intake were unanswered to the Joint Committee on
15 Government and Finance by July 1, 2023.

16 (b) A copy of any report of abuse, neglect, financial exploitation, or emergency situation
17 shall be immediately filed with the following agencies:

18 (1) The Department of Health and Human Resources;

19 (2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or

20 (3) In case of a death, to the appropriate medical examiner or coroner's office.

21 (c) If the person who is alleged to be abused, neglected, or financially exploited is a
22 resident of a nursing home or other residential facility, a copy of the report shall also be filed with
23 the state or regional long-term care ombudsman and the administrator of the nursing home or
24 facility.

25 (d) Reports of known or suspected institutional abuse, neglect, or financial exploitation of a
26 vulnerable adult or facility resident, or the existence of an emergency situation in an institution,
27 nursing home, or other residential facility shall be made, received, and investigated in the same
28 manner as other reports provided for in this article. In the case of a report regarding an institution,

29 nursing home, or residential facility, the department shall immediately cause an investigation to be
30 conducted.

31 (e) The department shall annually submit a report in an electronic format, via the legislative
32 web page, on July 1, to the Joint Committee on Government and Finance containing the following
33 information: how many calls were made by county to centralized intake, how many calls were
34 referred to a county by centralized intake, how many calls were screened out by county by
35 centralized intake, and the time from referral to investigation by county.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-106. Location of child welfare services; state and federal cooperation; juvenile services.

1 (a) The child welfare service of the state shall be located within and administered by the
2 Department of Health and Human Resources, Bureau for Social Services. The Division of Juvenile
3 Services of the Department of Military Affairs and Public Safety shall administer the secure
4 predispositional juvenile detention and juvenile correctional facilities of the state. Notwithstanding
5 any other provision of this code to the contrary, the administrative authority of the Division of
6 Juvenile Services over any child or juvenile in this state extends only to those detained or
7 committed to a secure detention facility or secure correctional facility operated and maintained by
8 the division by an order of a court of competent jurisdiction during the period of actual detention or
9 confinement in the facility.

10 (b) The Department of Health and Human Resources, Bureau for Social Services is
11 designated as the state entity to cooperate with the United States Department of Health and
12 Human Services and United States Department of Justice in extending and improving child
13 welfare services, to comply with federal regulations, and to receive and expend federal funds for
14 these services. The Division of Juvenile Services of the Department of Military Affairs and Public

15 Safety is designated as the state entity to cooperate with the United States Department of Health
 16 and Human Services and United States Department of Justice in operating, maintaining and
 17 improving juvenile correction facilities and centers for the predispositional detention of children, to
 18 comply with federal regulations, and to receive and expend federal funds for these services.

19 (c) The Division of Juvenile Services of the Department of Military Affairs and Public Safety
 20 is authorized to operate and maintain centers for juveniles needing detention pending disposition
 21 by a court having juvenile jurisdiction or temporary care following that court action.

§49-1-208. Definitions related, but not limited, to state and local agencies.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
 2 them that relate to, but are not limited to, state and local agencies, except in those instances where
 3 a different meaning is provided or the context in which the word is used clearly indicates that a
 4 different meaning is intended.

5 "Department" or "state department" means the West Virginia Department of Health and
 6 Human Resources, Bureau for Social Services.

7 "Division of Juvenile Services" means the division within the West Virginia Department of
 8 Military Affairs and Public Safety.

9 "Law-enforcement officer" means a law-enforcement officer of the State Police, a
 10 municipality or county sheriff's department.

11 "Secretary" means the Secretary of the West Virginia Department of Health and Human
 12 Resources.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-101. Authorization and responsibility; Appointment of Commissioner, duties; compensation; organization, and staff.

1 ~~(a) The Department of Health and Human Resources is authorized to provide care, support~~
 2 ~~and protective services for children who are handicapped by dependency, neglect, single parent~~
 3 ~~status, mental or physical disability, or who for other reasons are in need of public service. The~~

4 ~~department is also authorized to accept children for care from their parent or parents, guardian,~~
5 ~~custodian or relatives and to accept the custody of children committed to its care by courts. The~~
6 ~~Department of Health and Human Resources or any county office of the department is also~~
7 ~~authorized and to accept temporary custody of children for care from any law-enforcement officer~~
8 ~~in an emergency situation. The Bureau for Social Services is hereby established within the~~
9 ~~Department of Health and Human Resources. The bureau is under the immediate supervision of~~
10 ~~the commissioner, who is responsible for the exercise of the duties and power assigned to the~~
11 ~~bureau under the provisions of this chapter.~~

12 (b) ~~The Department of Health and Human Resources is responsible for the care of the~~
13 ~~infant child of an unmarried mother who has been committed to the custody of the department~~
14 ~~while the infant is placed in the same licensed child welfare agency as his or her mother. The~~
15 ~~department may provide care for those children in family homes meeting required standards, at~~
16 ~~board or otherwise, through a licensed child welfare agency, or in a state institution providing care~~
17 ~~for dependent or neglected children. If practical, when placing any child in the care of a family or a~~
18 ~~child welfare agency the department shall select a family holding the same religious belief as the~~
19 ~~parents or relatives of the child or a child welfare agency conducted under religious auspices of the~~
20 ~~same belief as the parents or relatives. The Bureau for Social Services is authorized to provide~~
21 ~~care, support and protective services for children who are handicapped by dependency, neglect,~~
22 ~~single parent status, mental or physical disability, or who for other reasons are in need of public~~
23 ~~service. The department is also authorized to accept children for care from their parent or parents,~~
24 ~~guardian, custodian or relatives and to accept the custody of children committed to its care by~~
25 ~~courts. The Department of Health and Human Resources or any county office of the department is~~
26 ~~also authorized and to accept temporary custody of children for care from any law-enforcement~~
27 ~~officer in an emergency situation.~~

28 (c) ~~The Bureau for Social Services is responsible for the care of the infant child of an~~
29 ~~unmarried mother who has been committed to the custody of the department while the infant is~~

30 placed in the same licensed child welfare agency as his or her mother. The department may
31 provide care for those children in family homes meeting required standards, at board or otherwise,
32 through a licensed child welfare agency, or in a state institution providing care for dependent or
33 neglected children. If practical, when placing any child in the care of a family or a child welfare
34 agency the department shall select a family holding the same religious belief as the parents or
35 relatives of the child or a child welfare agency conducted under religious auspices of the same
36 belief as the parents or relatives.

37 (d) There is hereby created the position of commissioner. The commissioner shall:

38 (1) Be appointed by the secretary;

39 (2) Serve at the will and pleasure of the secretary;

40 (3) Serve on a full-time basis and shall not engage in any profession or occupation,
41 including the holding of a political office in the state by either election or appointment, while serving
42 as commissioner;

43 (4) Have responsible administrative experience, possess management skills, and have
44 knowledge of the law as it relates to child welfare;

45 (5) Before entering upon the discharge of the duties of commissioner, the commissioner
46 shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution
47 of West Virginia.

48 (e) The duties of the commissioner shall include the following:

49 (1) To direct and administer the daily operations of the Bureau for Social Services;

50 (2) To administer the budget of the Bureau for Social Services, which once such funds are
51 allocated, such funds shall not be transferred to any other bureau within the Department of Health
52 and Human Resources;

53 (3) To keep statistics regarding child welfare in West Virginia at the state and county level;

54 (4) To prepare, issue, and submit statistical reports regarding the status of child welfare in
55 West Virginia to the public and to the Joint Committee in Government and Finance or more

56 frequently, as needed or as requested.

57 (5) To organize the work of the Bureau in such offices or other organizational units as he or
58 she may determine to be necessary for its effective and efficient operation;

59 (6) To employ a sufficient number of employees in the Bureau for Social Services so as to
60 provide for the effective and efficient operation of the Bureau. The Bureau shall be distributed
61 geographically as determined by the Commissioner and as set forth in §49-2-102 of this code.

62 (A) The Secretary may transfer employees of the Department to the Bureau for Social
63 Services as may be necessary to fulfill the duties of the Bureau under this chapter: *Provided*, That
64 the Secretary may not transfer employees of other divisions and agencies within the Department
65 to the Bureau without a prior finding that the office of position held by the employee may be
66 eliminated and until the office of position is, in fact, eliminated.

67 (B) The Secretary may transfer resources of the Department to the Bureau for Social
68 Services as may be necessary to fulfill the duties of the Bureau under this chapter; and

69 (7) The Commissioner may employ such staff or employees as may be necessary to
70 administer and enforce this chapter.

§49-2-102. Minimum staffing complement for child protective services Staffing Allocation
for Child Protective Services Workers.

1 [Repealed.] Effective on the passage of this amendment to this section, the commissioner
2 shall allocate and station child protective services workers in counties according to the county
3 population based on the 2020 Census.

ARTICLE 10. EXEMPTION FROM WEST VIRGINIA DIVISION OF PERSONNEL.

§49-10-101. Legislative Findings.

1 The Legislature finds the state of West Virginia is experiencing a child welfare crisis in
2 West Virginia. From 2016-2020, the child protective service vacancy rate has increased from 9.7
3 percent to 33 percent. This significant lack of staffing has caused a delay in response times to
4 begin investigations as indicated during the same time period with the average hours to start a

5 child protective service investigation after referral being 119.1 hours in 2016 to now averaging
6 428.1 hours in 2020. This significant failure to begin the investigation can and has cost lives. The
7 Legislature finds that the Bureau for Social Services is having extreme difficulty in recruiting and
8 retaining child protective service workers, youth service workers, adult protective service workers,
9 and other related workers, including necessary casework support personnel and managers at the
10 county level, who assist in the provision of services to vulnerable populations.

§49-10-102. Bureau for Social Service employees exempt from Division of Personnel.

1 (a) The West Virginia Bureau for Social Services shall develop a special merit-based
2 system, including an application appointment procedure for child protective service workers, youth
3 service workers, and adult protective workers, including necessary casework support personnel
4 and managers at the county level, who assist in the provision of services to vulnerable
5 populations. The procedure shall include classification specifications, and may include
6 compensation adjustments, retention incentives, and hiring approval by the commissioner. The
7 commissioner shall have the full authority to evaluate applicants for employment or promotion or
8 make classification determinations for positions within the special merit-based system. The
9 special merit-based system shall be approved by the State Personnel Board and such approval
10 shall not be unreasonably withheld. The pay rates and employment requirements shall be put into
11 effect no sooner than January 1, 2024, and no later than January 1, 2025.

12 (c) Funding for the pay rates and employment requirements shall be provided from the
13 appropriation to the Department of Health and Human Resources.

14 (d) The provisions of §6C-2-1 et seq. of this code shall be applicable to the employees of
15 the special merit-based system: *Provided*, That there is no requirement for uniformity regarding
16 the pay scale for the same classification between regions of the state to account for market rates
17 and demand for specific positions and the Legislature specifically finds there is no right to a
18 grievance for any such regional pay disparity.

19 (e) The commissioner may conduct periodic wage and compensation analysis of identified

- 20 market rates for the above positions as determined by the commissioner.
- 21 (f) The commissioner may promulgate emergency rules pursuant to the provisions of
- 22 §29A-3-15 of this code and shall propose rules for legislative approval in accordance with the
- 23 provisions of §29A-3-1 et seq. of this code to implement and comply with the provisions of this
- 24 section no later than to be considered during the 2024 Legislative Session.

NOTE: The purpose of this bill is to revise requirements regarding the allocation of child protective workers in counties based upon the population of the county. The department shall provide for a redundant system for its centralized intake to provide for a seamless transition in the event of an outage. This system shall all for reporting in the same means in the same means as if the outage had not occurred and no time delay shall occur when the outage take place. The bill provides for data reporting on statistics from the time centralized intake is contacted. The bill creates the Bureau for Social Services and its Commissioner. It gives the Commissioner duties and responsibilities over staff. The bill creates a special merit-based system for critical, high need positions that the Bureau for Social Services has had difficulty filing. This system provides that there can be a pay disparity among regions in the state based upon job demand and market rates and this cannot be subject to a grievance even if it is within the same job classifications.

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