

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 412

By Senators Takubo and Woelfel

[Introduced January 12, 2024; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-3-4 of the Code of West Virginia, 1931, as amended, relating to
2 medical exemptions to state vaccination laws; requiring physician submitting certification
3 for medical exemption be licensed in West Virginia; requiring physician submitting medical
4 exemption to present facts of case to the State Immunization Officer; creating deadline for
5 State Immunization Officer to render initial and remand decision; defining contents of the
6 case file; stating if case remanded for additional medical information and no additional
7 medical information is submitted on remand, State Immunization Officer's decision will be
8 upheld; creating Immunization Appeal Oversight Board; setting forth board composition;
9 setting forth time frame for State Immunization Officer to transmit file; setting forth purpose
10 of the board; setting forth duties of the board; setting forth process and rate of payment for
11 the board; providing the State Health Officer will review a random sample of the
12 Immunization Officer's medical exemption approvals; setting forth document handling
13 standards for personally identifiable information; providing for immunity for the board;
14 setting forth factors that may be considered by the board in rendering its decision;
15 providing a time frame for the board to render its decision; providing that a child may
16 remain in school and day care pending review of the board and providing a transition time if
17 the State Immunization Officer's decision is upheld; providing board member is not subject
18 to subpoena; providing the board's documents shall be made available to the court in
19 redacted form upon the court's request; providing the board's decision may be appealed;
20 and providing penalties to the physician for unethical conduct including five or more
21 overturned exemptions; providing penalties for State Immunization Officer found to have
22 five or more overturned decisions in a two year period.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER
INFECTIOUS DISEASES.**

§16-3-4. Compulsory immunization of school children; information disseminated offenses; penalties exemptions.

1 (a) Whenever a resident birth occurs, the commissioner shall promptly provide parents of
2 the newborn child with information on immunizations mandated by this state or required for
3 admission to a public, private, and parochial school in this state or a state-regulated child-care
4 center.

5 (b) Except as hereinafter provided, a child entering school or a state-regulated child-care
6 center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis,
7 mumps, diphtheria, polio, rubella, tetanus, and whooping cough.

8 (c) No child or person may be admitted or received in any of the schools of the state or a
9 state-regulated child-care center until he or she has been immunized against chickenpox,
10 hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and whooping cough
11 or produces a certificate from the commissioner granting the child or person an exemption from
12 the compulsory immunization requirements of this section.

13 (d) Any school or state-regulated child-care center personnel having information
14 concerning any person who attempts to be enrolled in a school or state-regulated child-care center
15 without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,
16 diphtheria, polio, rubella, tetanus, and whooping cough shall report the names of all such persons
17 to the commissioner.

18 (e) Persons may be provisionally enrolled under minimum criteria established by the
19 commissioner so that the person's immunization may be completed while missing a minimum
20 amount of school. No person shall be allowed to enter school without at least one dose of each
21 required vaccine.

22 (f) County health departments shall furnish the biologicals for this immunization for children
23 of parents or guardians who attest that they cannot afford or otherwise access vaccines
24 elsewhere.

25 (g) Health officers and physicians who provide vaccinations must present the person
26 vaccinated with a certificate free of charge showing that they have been immunized against
27 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and
28 whooping cough, or he or she may give the certificate to any person or child whom he or she
29 knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,
30 diphtheria, polio, rubella, tetanus and whooping cough.

31 (h) The commissioner is authorized to grant, renew, condition, deny, suspend, or revoke
32 exemptions to the compulsory immunization requirements of this section, on a statewide basis,
33 upon sufficient medical evidence that immunization is contraindicated or there exists a specific
34 precaution to a particular vaccine.

35 (1) A request for an exemption to the compulsory immunization requirements of this
36 section must be accompanied by the certification of a licensed physician to practice in the state of
37 West Virginia that clearly stating states that the physical condition of the child is such that
38 immunization is contraindicated or there exists a specific precaution to a particular vaccine. The
39 physician must present the facts of the case to the State Immunization Officer for review. The
40 State Immunization Officer shall render a decision within 30 days from the date the case file is
41 complete. The case file includes the written request, the information presented by the physician,
42 and any other information submitted to the State Immunization Officer regarding the exemption
43 request. The State Immunization Officer must issue a remand decision within 60 days of receipt of
44 an order remanding the case. In the event that the case was remanded for receipt of additional
45 medical information and no medical information is submitted within this timeframe, then the initial
46 decision of the State Immunization Officer will be upheld.

47 (2) The commissioner is authorized to appoint and employ an Immunization Officer to
48 make determinations on request for an exemption to the compulsory immunization requirements
49 of this section, on a statewide basis, and delegate to the Immunization Officer the authority
50 granted to the commissioner by this subsection.

51 (3) A person appointed and employed as the Immunization Officer must be a physician
52 licensed under the laws of this state to practice medicine.

53 ~~(4) The Immunization Officer's decision on a request for an exemption to the compulsory~~
54 ~~immunization requirements of this section may be appealed to the State Health Officer~~

55 (4) If the State Immunization Officer determines that the case does not meet criteria for a
56 medical exemption based upon current guidelines by the Center for Disease Control and
57 Prevention, then the case file shall be submitted to an Immunization Appeals Oversight Board for
58 further review, within 30 days of the Immunization Officer's decision. The Immunization Appeals
59 Oversight Board shall consist of physicians, licensed in the state West Virginia to practice
60 medicine and preferably with a degree in Pediatrics, Allergy and Immunology, Infectious Disease,
61 or Family Practice. One member shall be appointed by each Dean of the West Virginia University
62 School of Medicine, the Marshall University School of Medicine, and the West Virginia Osteopathic
63 School of Medicine. If a majority of this board agrees that sufficient medical evidence exists for an
64 exemption, it will be granted and the underlying decision of the State Immunization Officer will be
65 overturned. If a majority vote of this board agrees that sufficient medical evidence does not exist to
66 support an exemption, then the prior decision of the Immunization Officer will be upheld. If there is
67 insufficient information to make a decision, the board may remand the matter to the State
68 Immunization Officer for further development.

69 (A) The purpose of this board is to provide a review from a decision of the State
70 Immunization Officer regarding a medical exemption;

71 (i) The State Health Officer will review a random sample of the Immunization Officer's
72 medical exemption approvals from the last year. If a significant number of the approved
73 exemptions were found to be incongruent with the medical evidence, then the Immunization
74 Officer is subject to re-training and the possibility of progressive discipline up to an including
75 removal from the position of State Immunization Officer.

76 (ii) Records of the board that include personally identifiable information shall be

77 transmitted and stored in a manner to protect the confidentiality of the information including but not
78 limited to transmitting and storing the information in the manner that is compliant with the
79 requirements of the Health Insurance Portability and Accountability Act of 1996 and the Health
80 Information Technology for Economic and Clinical Health Act of 2009.

81 (iii) Members of the Immunization Appeals Oversight Board shall be immune from suit and
82 liability, either personally or in the official capacity, for any claim for damage to or loss or property or
83 personal injury or other civil liability caused or arising out of any actual or alleged act, error or
84 omission that occurred within the scope of their duties or responsibilities on the board: *Provided,*
85 That nothing in this subsection shall be construed to protect any person from suit or liability, or
86 both, for any damage, loss or injury, or liability caused by the intentional or willful and wanton
87 misconduct of that person or a board member.

88 (B) Each member of the board whose regular salary is not paid by the State of West
89 Virginia shall be paid the same compensation and expense reimbursement that is paid to
90 members of the Legislature for their interim duties as recommended by the Citizens Legislature
91 Compensation Commission as authorized by law for each day or portion thereof engaged in the
92 discharge of their official duties;

93 (C) Reimbursement for expenses shall not be made, except on an itemized account,
94 properly certified by the members of the board. All reimbursement for expenses shall be paid out
95 of the State Treasury upon a requisition of the State Auditor;

96 (D) In performing its duties, the board shall have access to the case file.

97 (E) Upon receipt of the case file, the Immunization Appeal Board shall render a decision
98 within 30 days of receipt.

99 (F) While a case is pending review by the Immunization Appeals Oversight Board, a child
100 may be provisionally enrolled. If the Immunization Appeals Oversight Board upholds the decision
101 of the State Immunization Officer, then the child may be provisionally enrolled until he or she has
102 met the immunization requirements or must cease enrollment at a public or private school at the

103 end of the currently enrolled semester. If the child attends day care, the child may be provisionally
104 enrolled until he or she has met the immunization requirements or must cease enrollment within 60
105 days of the date of the decision of the decision of the Immunization Appeals Board.

106 (G) A board member is not subject to subpoena to appear in a judicial hearing by virtue of
107 being a member of the board or fulfilling his or her duties under this section. Upon request of the
108 circuit court, the board shall make all documents, reports, and other materials used in making its
109 decision available to the court in a redacted form upon the circuit court's request.

110 (5) The final determination of the ~~State Health Officer~~ Immunization Appeals Oversight
111 Board is subject to a right of appeal pursuant to the provisions of ~~article five chapter twenty-nine-a~~
112 §29A-5-1 et seq. of this code.

113 (i) A physician who provides any person with a false certificate of immunization against
114 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus, and
115 whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25
116 nor more than \$100. The physician shall also be reported to their respective board for review for
117 potential unethical conduct and the board may take action accordingly. A physician who is found to
118 have five or more overturned exemptions shall have their privilege to grant further exemptions
119 removed.

120 (j) If the Immunization Officer is found to have five or more overturned decisions, in a two
121 ear period, then the Immunization Officer is subject to re-training and the possibility of progressive
122 discipline up to and including removal form the position of State Immunization Officer. Medical
123 exemptions that were initially denied due to insufficient medical information will not count towards
124 the five overturned exemptions.

NOTE: The purpose of this bill is to amend medical exemptions to state vaccination laws. The bill requires the physician submitting certification for medical exemption be licensed in West Virginia. The bill requires the physician submitting medical exemption to present facts of case to the State Immunization Officer. The bill creates a deadline for the State Immunization Officer to render initial and remand decision. The bill defines contents of the

case file. The bill states that if a case is remanded for additional medical information and no additional medical information is submitted on remand, the State Immunization Officer's decision will be upheld. The bill creates an Immunization Appeal Oversight Board. The bill sets forth the board composition. The bill sets forth the timeframe for State Immunization Officer to transmit file. The bill sets forth the purpose of the board. The bill sets forth duties of the board. The bill sets forth the process and rate of payment for the board. The bill provides that the State Health Officer will review a random sample of the Immunization Officer's medical exemption approvals. The bill sets forth the document handling standards for personally identifiable information. The bill provides for immunity for the Board. The bill sets forth factors that may be considered by the board in rendering its decision. The bill provides a timeframe for the board to render its decision. The bill provides that a child may remain in school and day care pending review of the board and providing a transition time if the Immunization Officer's decision is upheld. The bill provides that a board member is not subject to subpoena. The bill provides the board's documents shall be made available to the court in redacted form upon the court's request. The bill provides the board's decision may be appealed. The bill provides penalties to the physician for unethical conduct including five or more overturned exemptions. Finally, the bill sets penalties for when the State Immunization Officer is found to have five or more overturned decisions in a two year period.

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