WEST VIRGINIA CODE CHAPTER 16 ARTICLE 1

WV Legislature

§16-1-1. Purpose.

It is the policy of this state to promote the physical and mental health of all of its citizens and to prevent disease, injury, and disability whenever possible. The state recognizes its responsibility to assist in the provision of essential public health services and establishes by this article a state public health system to work in conjunction with local boards of health to provide basic public health services that encourage healthy people in healthy communities. Until January 1, 2024, the Bureau for Public Health and the Department of Health and Human Resources shall have those powers and duties respecting the administration of the state public health system as authorized, granted and imposed by this chapter and elsewhere by law.

Beginning January 1, 2024, the Department of Health is comprised of the agencies as provided in §5F-2-1a of this code, is charged with the administration of this chapter, and shall have those powers and duties respecting the administration of the state public health system as authorized, granted and imposed by this chapter and elsewhere by law.

WV Legislature

§16-1-2. Definitions.

As used in this article:

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

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

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

(4) "Commissioner" means the commissioner of the bureau, who may be designated as the state health officer;

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

(6) "Department" means the Department of Health.

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

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

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

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

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

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

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

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

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

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

(I) Evaluating the effectiveness, accessibility, and quality of personal and population-based

WV Legislature

health services; and

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

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

(10) "Local health department" means the staff of the local board of health;

(11) "Local health officer" has the meaning ascribed in §16-2-2 of this code.

(12) "Municipal board of health" means one form of organization for a local board of health and means a board of health serving a single municipality;

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

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

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

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

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

(18) "Public water system" means:

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

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

WV Legislature

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

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

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

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

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

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

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

(20) "Secretary" means the secretary of the department;

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

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

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

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

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

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

(d) The secretary may appoint advisory councils.

(e) (1) The Secretary of the Department of Health is the chief executive officer of that department and beginning January 1, 2024, is charged with the administration of this chapter. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the Governor. The Secretary shall be paid an annual salary not to exceed $175,000. Upon his or her initial appointment, which may be at any time after the effective date of this act, the Secretary shall take the oath of office described in this section and commence his or her duties. If appointed before January 1, 2024, the Secretary shall take the oath of office described in this section and commence such duties as determined by the Secretary to be necessary to prepare for the administration of this chapter.

(2) Before entering upon the duties of his or her office, the secretary shall take and subscribe to the oath of office prescribed by section five, article four of the state Constitution.

(3) The secretary shall not be a candidate for, or hold, any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or be a member or officer of any political party committee, or serve as an election official, or engage in any political activity, other than to vote, in behalf of, or in opposition to, any candidate, political party or public issue involved in an election. Any violation by the secretary of the provisions of this section shall automatically vacate his or her appointment as secretary.

(4) In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

(A) Coordinate efforts with the Secretary of Human Services and the Secretary of Health Facilities, including authority to share the expense of administrative services through a memorandum of understanding established by agreement of the secretaries as required under §5F-2-1a of this code;

(B) Establish a state public health system; and

WV Legislature

(C) Cooperate with the Office of the Inspector General and take action on its findings;

(5) The secretary may:

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

(2) Appoint advisory councils.

(f) Any contract, agreement or memorandum of understanding between the secretary and West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is exempt from the provisions of §5A-3-1 *et seq*., of this code.

WV Legislature

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

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

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

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

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

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

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

(3) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities, and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods, and swimming pools in this state, whether publicly or privately owned: *Provided*, That the secretary may not promulgate rules that require a public water supply system or business to have backflow prevention assemblies inspected more frequently than once in three years for a low-hazard system, which is defined as a hazard that could cause aesthetic problems or have a detrimental secondary effect on the quality of the public potable water supply: *Provided, however*, That a high-hazard system, which is defined as a hazard that is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and that presents an unreasonable risk to health, shall be inspected annually.

(4) Safe drinking water, including:

WV Legislature

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

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

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

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

(6) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed, and the availability, communications and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics. Any regulation of emergency medical service attendants and emergency medical care technician-paramedics may not exceed the provisions of §16-4C-1 *et seq.* of this code;

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

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

WV Legislature

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

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

(A) Base allocation amount for each county;

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

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

(D) Distribution of remaining funds on a per capita weighted population approach which factors coefficients for poverty, health status, population density, and health department interventions for each county and a coefficient which encourages counties to merge in the provision of public health services; and

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

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

WV Legislature

§16-1-5. State health officer; Commissioner of the Bureau for Public Health; appointment; qualifications; term.

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

WV Legislature

§16-1-6. Commissioner of the Bureau for Public Health; powers and duties.

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

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

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

(3) To investigate the cause of disease, especially of epidemics and endemic conditions, and the means of prevention, suppression, or control of those conditions; the source of sickness and mortality, the effects of environment, employment, habits, and circumstances of life on the public health.

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

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

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

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

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

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

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

WV Legislature

(11) To transfer any patient or resident between hospitals and facilities and, by agreement with the state Commissioner of Corrections and Rehabilitation and otherwise in accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state Commissioner of Corrections and Rehabilitation;

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

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

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

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

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

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

(18) To expend, for the purpose of performing the public health duties imposed on the

WV Legislature

bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may make advance payments to public and nonprofit health services providers when the commissioner determines it is necessary for the initiation or continuation of public health services. The advance payments, being in derogation of the principle of payment only after receipt of goods or services, shall be authorized only after serious consideration by the commissioner of the necessity of the advance payments and shall be for a period no greater than 90 days in advance of rendition of service or receipt of goods and continuation of health services; and

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

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

(1) Enhance the quality and availability of essential public health services throughout the state provided by local boards of health;

(2) Provide technical assistance and consultation to a local board of health agency;

(3) Allocate and distribute funding based upon performance based standards;

(4) Provide technical assistance to the local public health workforce;

(5) Facilitate bi-directional communication;

(6) Establish a uniform state-wide computer system for the reporting of public health data;

(7) Inventory the services provided by a local boards of health;

(8) Support sharing of services between local boards of health;

(9) Create a performance-based evaluation system based on standards established by legislative rule;

(10) Provide a quarterly training to ensure consistency in the application of state laws, legislative rules, and local health department rules; and

(11) Enforce compliance with performance standards.

WV Legislature

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

(a) The commissioner serves on the following advisory councils, boards, and commissions:

(1) The Advisory Committee on Cancer (Cancer Registry);

(2) The Air Quality Board;

(3) The Appalachian States Low-level Radioactive Waste Commission;

(4) The Child Fatality Review Team;

(5) The Childhood Immunization Advisory Committee;

(6) The Early Intervention Coordinating Council;

(7) The Interagency Council on Osteoporosis;

(8) The Sewage Advisory Board;

(9) The State Emergency Response Commission;

(10) The State Groundwater Coordinating Committee;

(11) The Water Development Authority;

(12) The West Virginia Commission for the Deaf and Hard of Hearing;

(13) The West Virginia Infrastructure and Jobs Development Council; and

(14) Any other advisory council, board, or commission as assigned by the secretary except for business, professional, or occupational licensing boards.

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

WV Legislature

§16-1-8. Inclusion of Alzheimer's disease in existing public health programs.

(a) The Commissioner of the Bureau for Public Health, in partnership with the Bureau for Medical Services and the Alzheimer's Association, shall, in its existing public health programs and services, educate health care professionals on the importance of early detection and timely diagnosis of cognitive impairment and dementia, use of validated cognitive assessment tools in the delivery of the Medicare Annual Wellness Visit, provision of effective care planning and care management at all stages of dementia, and delivery of counseling and referral.

(b) The Bureau for Public Health, in partnership with the Bureau of Senior Services, shall, in its existing, relevant public health outreach programs, incorporate information to increase understanding and awareness of Alzheimer's disease and other dementias, including information about the early signs of Alzheimer's disease and other dementias that should be discussed with health care professionals and the value of early detection and diagnosis, particularly among persons in diverse communities who are at greater risk of developing dementia.

(c) Any public awareness and/or educational outreach programs shall provide uniform, consistent guidance in nonclinical terms, with an emphasis on cultural relevancy and health literacy.

WV Legislature

§16-1-8a. Inclusion of PANS and PANDAS in existing public health programs.

(a) The Commissioner of the Bureau for Public Health, in consultation with the State Health Officer, shall, in its existing public health programs and services, to educate health care professionals on evaluating and treating Pediatric Acute-Onset Neuropsychiatric Syndrome (PANS) and Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infections (PANDAS).

(b) The Bureau for Public Health shall, in its existing, relevant public health outreach programs, incorporate information to increase understanding and awareness of PANS and PANDAS, including signs to be aware of, such as:

(1) Presence of obsessive compulsive disorder and/or tics;

(2) Symptoms begin between age three and puberty;

(3) Acute-onset and episodic (relapsing-remitting) course;

(4) Association with Group A Streptococcal (GAS) infection; and

(5) Association with Neurological Abnormalities disease.

WV Legislature

§16-1-9. Duties and powers of the commissioner; supervision over local sanitation; violations; jurisdiction; penalties.

No person, firm, company, corporation, institution or association, whether public or private, county or municipal, may install or establish any system or method of drainage, water supply, or sewage or excreta disposal without first obtaining a written permit to install or establish the system or method from the commissioner or his or her authorized representative. All systems or methods shall be installed or established in accordance with plans, specifications and instructions issued by the commissioner or which have been approved in writing by the commissioner or his or her authorized representative.

Whenever the commissioner or his or her authorized representative finds, upon investigation, that any system or method of drainage, water supply, or sewage or excreta disposal, whether publicly or privately owned, has not been installed in accordance with plans, specifications and instructions issued by the commissioner or approved in writing by the commissioner or his or her authorized representative, the commissioner or his or her authorized representative shall issue an order requiring the owner of the system or method to make alterations necessary to correct the improper condition. The alterations shall be made within a reasonable time, which shall not exceed 30 days, unless a time extension is authorized by the commissioner or his or her authorized representative.

The commissioner or his or her designee may determine, upon conducting a risk assessment, that any water supply system must be equipped with a backflow prevention assembly to protect the health and sanitation of water, whether publicly or privately owned: *Provided,* That water supply systems shall not require a backflow prevention assembly unless any of the following are met:

(i) it cross-connects with a sprinkler or fire suppression system;

(ii) it cross-connects with an active auxiliary water source or water well;

(iii) it cross-connects with any fluid storage tank, tub, pool or cistern 85 gallons or larger with a public water inlet that can be below the water level;

(iv) it cross-connects with a boiler system;

(v) it cross-connects with any land irrigation system; or

(vi) the property serviced by the public water supply is a funeral home or mortuary, restaurant, dry cleaner, medical facility, beauty and nail salon, car wash, multi-tenant retail space, commercial building three stories or taller, or commercial space with a dedicated fire service line/sprinkler system, industrial facility, salvage and/or wastewater facility, food processing facility, recycling facility where cross-connected to the public water supply, correctional facility, or any other customer using chemicals harmful to human health that are cross-connected to the public water supply.

WV Legislature

Prior to requiring installation of a backflow prevention assembly to a water supply system, a risk assessment is required and may be performed based upon the known type of water activity and usage involving the use of the public water supply, by written responses to a written questionnaire presented by the commissioner or his or her designee to the owner or occupier of the water use facility, building or dwelling, or by personal inspection made by the commissioner or his or her designee if the owner or occupier of the premises allows entrance.

Provided however, That any customer deemed required to install a backflow prevention assembly may appeal the determination and seek a waiver by the water utility, and if not satisfied, may appeal further to the Public Service Commission pursuant to §24-1-1 *et seq.*, §24-2-1 *et seq.* and §29A-1-1 *et seq.* of this code: *And provided further,* That the customer shall have the freedom to choose the brand of any required backflow prevention assembly that otherwise meets the required specifications of the commissioner or his or her designee.

The presence of sewage or excreta being disposed of in a manner not approved by the commissioner or his or her authorized representative constitutes prima facie evidence of the existence of a condition endangering public health.

The personnel of the Bureau for Public Health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or municipal, violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50 nor more than $500. Any continuing failure or refusal of the convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the commissioner or his or her authorized representative is a separate, distinct and additional offense for each 24 hour period of failure or refusal, and, upon conviction thereof, the violator shall be fined not less than $50 nor more than $500 for each conviction: *Provided,* That none of the provisions contained in this section apply to those commercial or industrial wastes that are subject to the regulatory control of the West Virginia Department of Environmental Protection.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of any provisions of this section.

WV Legislature

§16-1-9a. Regulation of public water systems.

(a) The secretary shall regulate public water systems as prescribed in this section.

(b) The secretary shall establish by legislative rule, in accordance with §29A-3-1 *et seq*. of this code:

(1) The maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals;

(2) Treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer;

(3) Provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(4) Minimum requirements for:

(A) Sampling and testing;

(B) System operation;

(C) Public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section;

(D) Recordkeeping;

(E) Laboratory certification; and

(F) Procedures and conditions for granting variances and exemptions to public water systems from state public water systems' regulations;

(5) Requirements covering the production and distribution of bottled drinking water;

(6) Requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water;

(7) Any requirements for a water supply system the commissioner determines is necessary to be equipped with a backflow prevention assembly, all maintenance activities must be documented and provided to the commissioner upon request: *Provided*, That the secretary may not require inspection more frequently than once in three years for a low-hazard system, which is defined as a hazard that could cause aesthetic problems or have a detrimental secondary effect on the quality of the public potable water supply: *Provided, however*, That a high-hazard system, which is defined as a hazard that is conducive to the

WV Legislature

introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and that presents an unreasonable risk to health, shall be inspected annually;

(8) Any other requirement the secretary finds necessary to effectuate the provisions of this article.

(c) The secretary, or his or her authorized representative or designee, may enter any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspecting, sampling, or testing and shall be furnished records or information reasonably required for a complete inspection.

(d) The secretary, or his or her authorized representative or designee, may conduct an evaluation necessary to assure the public water system meets federal safe drinking water requirements. The public water system shall provide a written response to the commissioner within 30 days of receipt of the evaluation by the public water system addressing corrective actions to be taken as a result of the evaluation.

(e)(1) Any individual or entity who violates any provision of this article, or any of the rules or orders issued pursuant to this article, is liable for a civil penalty not less than $1,000 nor more than $5,000. Each day's violation shall constitute a separate offense.

(2) For a willful violation of a provision of this article, or of any of the rules or orders issued under this article, an individual or entity shall be subject to a civil penalty of not more than $10,000 and each day's violation shall be grounds for a separate penalty.

(3) Civil penalties are payable to the secretary. All moneys collected under this section shall be deposited into a restricted account known as the Safe Drinking Water Fund. All moneys deposited into the fund shall be used by the secretary to provide technical assistance to public water systems.

(f) The secretary, or his or her authorized representative or designee, may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is located for threatened or continuing violations.

(g) By July 1, 2020, a public water system supplying water to the public within the state shall immediately, but in no instance later than six hours, report the occurrence and the lifting of each advisory to local departments of health and to local office of emergency management 911 answering point.

(h) By January 1, 2022, a public water system shall make available to interested customers boiled water advisories promptly through a text or a voice alert mass notification system.

WV Legislature

§16-1-9b. Permit approval for individual systems with surface water discharge; reserve areas.

Individual systems with surface water discharge may be considered for approval for a permit pursuant to section nine of this article under the following conditions: (1) To correct existing failures when other means of treatment and disposal have proven ineffective; (2) on a tract, lot or parcel of land that equals or exceeds two acres which cannot qualify for standard or alternative soil absorption systems; or (3) on existing lots which received approval under a prior permit where it has been determined that applicable standards cannot be met to qualify for a standard or alternate soil absorption system. Approval under these conditions are applicable only to single family residential units.

When installing a standard sewage disposal system, modified system, experimental system or other approved system, the reserve area shall consist of an area for the placement of the original system together with an area for replacement and upgrade of absorption field lines within the reserve area. Testing of the site for approval shall consist of a six foot hole and a percolation test of the soils.

WV Legislature

§16-1-9c. Required update or completion of source water protection plans.

(a) An existing public water utility that draws and treats water from a surface water supply source or a surface water influenced groundwater supply source shall submit to the commissioner an updated or completed source water protection plan for each of its public water system plants with such intakes to protect its public water supplies from contamination. Every effort shall be made to inform and engage the public, local governments, local emergency planners, local health departments, and affected residents at all levels of the development of the protection plan.

(b) The completed or updated plan for each affected plant, at a minimum, shall include the following:

(1) A contingency plan that documents each public water utility's planned response to contamination of its public surface water supply source or its public surface water influenced groundwater supply source;

(2) An examination and analysis of the public water system's ability to isolate or divert contaminated waters from its surface water intake or groundwater supply and the amount of raw water storage capacity for the public water system's plant;

(3) An examination and analysis of the public water system's existing ability to switch to an alternative water source or intake in the event of contamination of its primary water source;

(4) An analysis and examination of the public water system's existing ability to close its water intake in the event the system is advised that its primary water source has become contaminated due to a spill or release into a stream and the duration of time it can keep that water intake closed without creating a public health emergency;

(5) The following operational information for each plant receiving water supplies from a surface water source:

(A) The average number of hours the plant operates each day, and the maximum and minimum number of hours of operation in one day at that plant during the past year; and

(B) The average quantities of water treated and produced by the plant per day, and the maximum and minimum quantities of water treated and produced at that plant in one day during the past year;

(6) An analysis and examination of the public water system's existing available storage capacity on its system, how its available storage capacity compares to the public water system's normal daily usage and whether the public water system's existing available storage capacity can be effectively utilized to minimize the threat of contamination to its system;

(7) The calculated level of unaccounted for water experienced by the public water system for

WV Legislature

each surface water intake, determined by comparing the measured quantities of water which are actually received and used by customers served by that water plant to the total quantities of water treated at the water plant over the past year. If the calculated ratio of those two figures is less than 85 percent, the public water system is to describe all of the measures it is actively taking to reduce the level of water loss experienced on its system;

(8) A list of the potential sources of significant contamination contained within the zone of critical concern as provided by the Department of Environmental Protection, the Bureau for Public Health and the Division of Homeland Security and Emergency Management. The exact location of the contaminants within the zone of critical concern is not subject to public disclosure in response to a Freedom of Information Act request under §29B-1-1 et seq. of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility. Disclosure is permitted on any location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern to the extent they are in the public domain through a state or federal agency. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency;

(9) If the public water utility's water supply plant is served by a single-source intake to a surface water source of supply or a surface water influenced source of supply, the submitted plan shall also include an examination and analysis of the technical and economic feasibility of each of the following options to provide continued safe and reliable public water service in the event its primary source of supply is detrimentally affected by contamination, release, spill event or other reason:

(A) Constructing or establishing a secondary or backup intake which would draw water supplies from a substantially different location or water source;

(B) Constructing additional raw water storage capacity or treated water storage capacity or both, to provide at least two days of system storage, based on the plant's maximum level of production experienced within the past year;

(C) Creating or constructing interconnections between the public water system with other plants on the public water utility system or another public water system, to allow the public water utility to receive its water from a different source of supply during a period its primary water supply becomes unavailable or unreliable due to contamination, release, spill event or other circumstance;

(D) Any other alternative which is available to the public water utility to secure safe and reliable alternative supplies during a period its primary source of supply is unavailable or negatively impacted for an extended period; and

WV Legislature

(E) If one or more alternatives set forth in paragraphs (A) through (D), inclusive, of this subdivision is determined to be technologically or economically feasible, the public water utility shall submit an analysis of the comparative costs, risks and benefits of implementing each of the described alternatives;

(10) A management plan that identifies specific activities that will be pursued by the public water utility, in cooperation and in concert with the Bureau for Public Health, local health departments, local emergency responders, local emergency planning committee, and other state, county, or local agencies and organizations to protect its source water supply from contamination, including, but not limited to, notification to and coordination with state and local government agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic surveys of the system, the adoption of best management practices, the purchase of property or development rights, conducting public education or the adoption of other management techniques recommended by the commissioner or included in the source water protection plan;

(11) A communications plan that documents the manner in which the public water utility, working in concert with state and local emergency response agencies, shall notify the local health agencies and the public of the initial spill or contamination event and provide updated information related to any contamination or impairment of the source water supply or the system's drinking water supply, with an initial notification to the public to occur, in any event, no later than 30 minutes after the public water system becomes aware of the spill, release or potential contamination of the public water system;

(12) A complete and comprehensive list of the potential sources of significant contamination contained within the zone of critical concern, based upon information which is directly provided or can otherwise be requested and obtained from the Department of Environmental Protection, the Bureau for Public Health, the Division of Homeland Security, and Emergency Management and other resources; and

(13) An examination of the technical and economic feasibility of implementing an early warning monitoring system.

(c) A public water utility's public water system with a primary surface water source of supply or a surface water influenced groundwater source of supply shall submit, prior to the commencement of its operations, a source water protection plan satisfying the requirements of subsection (b) of this section.

(d) The commissioner shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection. Thereafter, within 180 days of receiving a plan for approval, the commissioner may approve, reject, or modify the plan as may be necessary and reasonable to satisfy the purposes of this article. The commissioner shall consult with the local public health officer and conduct at least one public hearing when reviewing the plan. Failure by a public water system to comply with a plan approved pursuant to this section is a violation of this article.

WV Legislature

(e) The commissioner may request a public water utility to conduct one or more studies to determine the actual risk and consequences related to any potential source of significant contamination identified by the plan, or as otherwise made known to the commissioner.

(f) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall submit an updated source water protection plan at least every three years or when there is a substantial change in the potential sources of significant contamination within the identified zone of critical concern.

(g) The commissioner's authority in reviewing and monitoring compliance with a source water protection plan may be transferred by the bureau to a nationally accredited local board of public health.

(h) The secretary is authorized to propose legislative rules for promulgation pursuant to §29A-3-1 et seq. of this code to implement the provisions of this section. The rules shall include a staggered schedule by hydrologic regions for the submission of source water protection plans by public water utilities. The first report submitted pursuant to a staggered schedule is exempt from the reporting interval set forth in §16-1-9c(f) of this code. Subsequent reports shall be submitted pursuant to the provisions of §16-1-9c(f) of this code.

WV Legislature

§16-1-9d. Wellhead and Source Water Protection Grant Program.

(a) The commissioner shall continue the Wellhead and Source Water Protection Grant Program.

(b) The fund heretofore created to provide funds for the Wellhead and Source Water Protection Grant Program is continued in the State Treasury and shall be known as the Wellhead and Source Water Protection Grant Fund. The fund shall be administered by the commissioner and shall consist of all moneys made available for the program from any source, including, but not limited to, all fees, civil penalties and assessed costs, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated and designated for the program by the Legislature and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the purposes set forth in this article to provide water source protection pursuant to the program and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal years ending June 30, 2014, and 2015, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(c) In prospectively awarding any grants under the Wellhead and Source Water Protection Grant Program, the commissioner shall prioritize those public water systems where there is the highest probability of contamination of the water source based on the source water assessment report or the source water protection plans which were previously performed. Priority shall also be extended to publicly owned public water systems over privately owned public water systems.

(d) The commissioner, or his or her designee, shall apply for and diligently pursue all available federal funds to help offset the cost of completing source water protection plans by the deadlines established in section nine-c of this article.

(e) The commissioner may receive any gift, federal grant, other grant, donation or bequest and receive income and other funds or appropriations to contribute to the Wellhead and Source Water Protection Grant Program.

WV Legislature

§16-1-9e. Long-term medical study.

The Bureau for Public Health shall endeavor to engage the Centers for Disease Control and other federal agencies for the purpose of creating, organizing and implementing a medical study to assess any long-term health effects resulting from the chemical spill that occurred on January 9, 2014, and which exposed the public to chemicals, including 4-methylcyclohexane.

The commissioner shall conduct such study pursuant to the authority granted to the commissioner pursuant to section six of this article: Provided, That in the event the commissioner determines that, in order to adequately perform such study, additional authority is required, the commissioner shall provide a report of such additional authority requested to the Governor and the Joint Committee on Government and Finance.

The commissioner shall cause to be collected and preserved information from health providers who treated patients presenting with symptoms diagnosed as having been caused or exacerbated as a result of exposure related to the January 9, 2014, chemical spill. The commissioner shall analyze such data and other information deemed relevant by the commissioner and provide a report of the commissioner's findings regarding potential long-term health effects of the January 9, 2014, chemical spill to the Joint Committee on Health by January 1, 2015, including the results of its efforts to engage federal cooperation and assistance for a long-term comprehensive study on the costs of conducting such study on behalf of the state.

WV Legislature

§16-1-9f. Inventory of potential sources of significant contamination.

(a) The secretary, working in collaboration with the Department of Environmental Protection and the Division of Homeland Security and Emergency Management, shall compile an inventory of all potential sources of significant contamination contained within a public water system's zone of critical concern and identify those that are not currently permitted or subject to regulation by the Secretary of the Department of Environmental Protection under one or more articles of chapter twenty-two of this code. In compiling the inventory, the secretary shall use information provided in the registrations submitted pursuant to section four, article thirty, chapter twenty-two of this code, information provided to the Division of Homeland Security and Emergency Management pursuant to section 312 of the federal Emergency Planning and Community Right-to-Know Act, and other information available to the agency.

(b) The department shall provide a copy of the compiled list of known potential sources of significant contamination in each zone of critical concern to the Department of Environmental Protection and the Division of Homeland Security and Emergency Management.

WV Legislature

§16-1-9g. Reciprocity in licensing for public water systems operators and wastewater operators.

(a) The commissioner shall grant certification to a public water systems operator or wastewater operator certified by another jurisdiction, if the applicant:

(1) Is actively seeking, has been offered or has accepted employment which requires a certified operator in West Virginia;

(2) Submits a completed application in a manner approved by the commissioner;

(3) Meets the educational and work experience requirements prescribed by the commissioner through his rulemaking authority; and

(4) Demonstrates he or she has successfully passed an examination, which is substantially equivalent to the certification level sought in West Virginia, as determined by the commissioner.

(b) If the commissioner determines that the other jurisdiction's examination is not equivalent, the water system operator or wastewater operator is required to successfully complete the West Virginia certification examination applicable to the certification level sought.

(c) Upon application to and approval by the commissioner, a certified public water system may apply for a limited waiver. If approved, a limited waiver shall permit a certified public water systems operator or wastewater operator to perform the tasks of an operator certified one grade higher as a supplement to the certified public water system's staffing and availability of the primary operator. A limited waiver shall only be granted to a certified public water system, if it has at least one certified public water system operator or wastewater operator in the required class for its operation.

WV Legislature

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

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

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

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

WV Legislature

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

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

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

WV Legislature

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

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

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

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

WV Legislature

§16-1-13. Hospital services revenue account.

(a) Subject to the provisions set forth in §12-2-2 of this code, there is continued in the State Treasury a separate account which shall be designated the "hospital services revenue account." The secretary shall deposit promptly into the account any fees received by a facility owned and operated by the department from whatever source including the federal government, state government, or other third-party payer or personal payment.

(b) The secretary may spend the moneys deposited in the hospital services revenue account in accordance with federal laws and regulations and with the laws of this state. The secretary may spend the moneys deposited in the hospital services revenue account in the amounts the secretary determines necessary for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility: *Provided*, That all disproportionate share hospital funds received into the account shall be transferred by intergovernmental transfer to the medical services trust fund created in §9-4A-2a of this code, except for funds appropriated by the Legislature for other purposes within the annual budget bill: *Provided, however*, That during any fiscal year in which the secretary anticipates spending any money from the account, he or she shall submit to the executive department during the budget preparation period prior to the Legislature convening, before that fiscal year for inclusion in the executive budget document and budget bill, his or her recommended capital investments, recommended priorities and estimated costs, as well as requests of appropriations for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health facility in the amounts the secretary determines to be necessary.

(c) The secretary shall make an annual report to the Legislature on the status of the health services revenue account, including the previous year's expenditures and projected expenditures for the next year.

WVLegislature

§16-1-13a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§16-1-14. Training of employees.

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

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

WV Legislature

§16-1-15. Investigations and hearings; power to administer oaths, subpoena witnesses, etc.; use of information and material acquired.

(a) The secretary, the commissioner, any officer or employee of the department designated by the secretary, or any other individual designated by the secretary may hold investigations, inquiries and hearings concerning matters covered by the laws of this state pertaining to public health and within the authority and the rules and orders of the secretary. Hearings shall be open to the public and shall be held upon any call or notice considered advisable by the secretary.

(b) Each individual designated to hold any inquiry, investigation or hearing may administer oaths and affirmations, certify to all official acts, issue subpoenas and order the attendance and testimony of witnesses in the production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the secretary or his or her authorized representative may invoke the aid of any circuit court of this state. The court may thereupon order that person to comply with the requirements of the subpoena order or to give evidence as to the matter in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) Subject to the provisions of subsections (a) and (b) of this section, the secretary may in his or her discretion make available to appropriate federal, state and municipal agencies information and material developed in the course of its investigation and hearings: Provided, That information obtained from studies or from any investigation made or hearing held pursuant to the provisions of this article may not be admissible in evidence in any action at law to recover damages for personal injury or in any action under the workers' compensation act, but the information, if available, shall be furnished upon request to the executive director of the workers' compensation commission for the sole purpose of adjusting claims presented to the commission.

WV Legislature

§16-1-16.

Repealed.

Acts, 2012 Reg. Sess., Ch. 118.

WV Legislature

§16-1-17. Penalties for interfering with examiners, inspectors or other authorized representatives of the commissioner in the performance of duty.

The commissioner may employ such administrative employees, inspectors, examiners or other persons as may be necessary to properly carry out the provisions of the public health laws of this state. The inspectors, examiners and other employees shall act as the commission's representatives and, under his or her direction, shall enforce the provisions of the public health laws and all duly promulgated public health rules and in the discharge of official duties, shall have the right of entry into any institution or school, whether public or private, public conveyances, dairy, creamery, slaughterhouse, workshop, factory, labor camp, place of entertainment, hotel, tourist camp, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where hazardous trades or industries are conducted.

Any person interfering with or attempting to interfere with any inspector, examiner, or other duly authorized employee of the commissioner in the discharge of his or her duties under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500.

WV Legislature

§16-1-18. Penalties for violating provisions of article.

Any person violating any of the provisions of this article for which the penalty is not otherwise provided, or any of the rules or orders issued pursuant to this article, shall be punishable by a fine of not less than $50 nor more than $500.

WV Legislature

§16-1-19. Child's right to nurse; location where permitted; right protected.

(a) The Legislature finds that breast feeding is an important, basic act of nurturing that is protected in the interests of maternal and child health.

(b) Notwithstanding any provision of this code to the contrary, a mother may breast feed a child in any location open to the public.

WV Legislature

§16-1-20. Definitions and purpose.

(a) For the purpose of this code:

"English" means and includes spoken English, written English, or English with the use of visual supplements;

"Language developmental milestones" means milestones of development aligned with the existing state instrument used to meet the requirements of federal law for the assessment of children from birth to five years of age, inclusive; and

"Language" includes American Sign Language (ASL) and English.

(b) For the purposes of developing and using language for a child who is deaf or hard-of-hearing, the following modes of communication may be used as a means for acquiring language: American Sign Language (ASL) services, spoken language services, dual language services, cued speech and tactile, or a combination thereof.

(c) This section shall apply only to children from birth to five years of age, inclusive.

(d) Implementation of this code is subject to an appropriation by the legislature.

(e) Federal regulations for children age birth through two do not require reporting of measures specific to language and literacy. However, this data is reported for children age three to five and the Department of Health and the West Virginia Department of Education shall make this report available to the advisory committee, and available to others upon request.

(f) The Department of Health and the West Virginia Department of Education through their agencies that serve children ages birth to five and their families shall jointly select language developmental milestones from existing standardized norms, to develop a family resource for use by families, providers, early interventionists, speech pathologists, educators, and other service providers to understand and monitor deaf and hard-of-hearing children’s receptive and expressive language acquisition and progress toward English literacy development. This family resource shall include:

(1) Language that provides comprehensive and neutral, unbiased information regarding different modes used to learn and access language (e.g., English, American Sign Language (ASL), or both) and services and programs designed to meet the needs of children who are deaf or hard-of-hearing;

(2) Language developmental milestones selected pursuant to the process specified in this section;

(3) Language appropriate for use, in both content and administration, with deaf and hard-of-hearing children from birth to five years of age, inclusive, who use both or one of the

WV Legislature

languages of American Sign Language (ASL) or English;

(4) Developmental milestones in terms of typical development of all children, by age range;

(5) Language written for clarity and ease of use by families;

(6) Language that is aligned with the Department of Health and the West Virginia Department of Education's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and state standards in language and literacy;

(7) Clarification that the parent(s) have the right to select which language (American Sign Language (ASL), English, or both) for their child's language(s) acquisition and developmental milestones;

(8) Clarification that the family resource is not a formal assessment of language and literacy development, and that a family's observations of their children may differ from formal assessment data presented at an individualized family service plan (IFSP) or individual education program (IEP) meeting; and

(9) Clarification that the family resource may be used during an individualized family service plan (IFSP) or individual education program (IEP) meeting for purposes of sharing the family's observations about their child's development.

(g) The Department of Health and the West Virginia Department of Education shall also prepare a list of valid and reliable existing tools or assessments for providers, early interventionists, speech pathologists, educators, and other service providers that can be used periodically to determine the receptive and expressive language and literacy development of deaf and hard-of-hearing children. These educator tools and assessments:

(1) Shall be in a format that shows stages of language development;

(2) Shall be used by providers, early interventionists, speech pathologists, educators, and other service providers to determine the progressing development of deaf and hard-of-hearing children's receptive and expressive language acquisition and developmental stages toward English literacy;

(3) Shall be selected from existing instruments or assessments used to assess the development of all deaf and hard-of-hearing children from birth to five years of age, inclusive;

(4) Shall be appropriate, in both content and administration, for use with children who are deaf and hard-of-hearing;

(5) May be used, in addition to the assessment required by federal law, by the individualized family service plan (IFSP) team and individual education program (IEP) team, as applicable,

WV Legislature

to track deaf and hard-of-hearing children's progress, and to establish or modify individualized family service plans (IFSPs) and individual education programs (IEPs); and

(6) May reflect the recommendations of the advisory committee established pursuant to §16-1-20(e) of this code.

(h) To promote the intent of this code, the Department of Health and the West Virginia Department of Education shall:

(1) Disseminate the family resource developed to families of deaf and hard-of-hearing children, as well as providers, early interventionists, speech pathologists, educators, and related service personnel; and

(2) Disseminate the educator tools and assessments selected to local educational agencies for use in the development and modification of individualized family service plans (IFSPs) and individual education programs (IEPs);

(3) Provide informational materials on the use of the resources, tools, and assessments to assist deaf and hard-of-hearing children in becoming linguistically ready for formal school entry (either itinerant services, West Virginia Universal PreK/PreK Special Needs, or Kindergarten) using the mode(s) of communication and language(s) chosen by the parents.

(i) If a deaf or hard-of-hearing child does not demonstrate progress in receptive and expressive language skills, as measured by one of the educator tools or assessments, or by the existing instrument used to assess the development of children with disabilities pursuant to federal law, as applicable, the child's individualized family service plan (IFSP) team and individual education program (IEP) team shall, as part of the process required by federal law, explain in detail the reasons why the child is not meeting the language developmental milestones or progressing towards them, and shall recommend specific strategies, services, and programs that shall be provided to assist the child's success toward English literacy development.

(j) The Department of Health and the West Virginia Department of Education shall establish an advisory committee to solicit input from stakeholders identified herein on the selection of language developmental milestones for children who are deaf or hard-of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing, for inclusion in the family resource developed pursuant to this section.

(k) The advisory committee shall be comprised of volunteer individuals representing all known modes of communication, specifically including the following:

(1) One parent of a child who is hard-of-hearing who uses the dual languages of American Sign Language (ASL) and English;

(2) One parent of a child who is deaf or hard-of-hearing who uses assistive technology to communicate with spoken English;

WV Legislature

(3) Two or three credentialed providers, early interventionists, speech pathologists, educators, or other service providers of deaf or hard-of-hearing children who are knowledgeable in the use of the dual languages of English and American Sign Language (ASL);

(4) Two or three credentialed providers, early interventionists, speech pathologists, educators, or other service provider of deaf or hard-of-hearing children who are knowledgeable in the use of assistive technology to communicate with spoken English;

(5) One expert who researches or is knowledgeable in the research regarding language outcomes for deaf and hard-of-hearing children using American Sign Language (ASL) or English;

(6) One expert who researches or is knowledgeable in the research regarding language outcomes for deaf and hard-of-hearing children using assistive technology to communicate with spoken English;

(7) One credentialed educator of deaf and hard-of-hearing children whose expertise is in curriculum and instruction in American Sign Language (ASL) and English;

(8) One credentialed educator of deaf and hard-of-hearing children whose expertise is in curriculum and instruction in assistive technology to communicate with spoken English;

(9) One advocate for the teaching and use of the dual languages of American Sign Language (ASL) and English;

(10) One advocate for the teaching and use of instruction in assistive technology to communicate with spoken English; and,

(11) One educational audiologist who can address the issues of aural habilitation and assistive technology to advocate for children using spoken language in mainstream environments.

(l) The advisory committee may also advise the Department of Health and the West Virginia Department of Education on the content and administration of the existing instrument used to assess the development of children with disabilities pursuant to federal law, as used to assess deaf and hard-of-hearing children's language and literacy development to ensure the appropriate use of that instrument with those children, and make recommendations regarding future research to improve the measurement of progress of deaf and hard-of-hearing children in language and literacy.

(m) The Department of Health and the West Virginia Department of Education shall provide the advisory committee with a list of existing language developmental milestones from existing standardized norms, along with any relevant information held by the departments regarding those language developmental milestones for possible inclusion in the family resource developed pursuant to this section.

WV Legislature

(n) After reviewing, the advisory committee shall recommend to the Department of Health and the West Virginia Department of Education language developmental milestones for selection.

(o) Commencing on or before July 31, 2021, and on or before each July 31 thereafter, the West Virginia Department of Education shall annually produce an aggregated report, using existing data reported in compliance with the federally required state performance plan on children with disabilities, that is specific to language and literacy development of children whose primary exceptionality is deaf and hard-of-hearing from birth to five years of age, inclusive, including those who are deaf or hard-of-hearing and have other disabilities, relative to their peers who are not deaf or hard-of-hearing. The departments shall make this report available to the advisory committee, the Legislative Oversight Commission on Education Accountability, the Legislative Oversight Commission on Health and Human Resources Accountability, and available to others upon request.

(p) All activities of the Department of Health and the West Virginia Department of Education in implementing this code shall be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of student information.

WV Legislature

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

[Repealed].

WV Legislature

§16-1-22. Office of the Inspector General.

[Repealed.]

WV Legislature

§16-1-22a. Judicial Review of decisions of contested cases.

[Repealed.]

WV Legislature

§16-1-22b. Authority to subpoena witnesses and documents when investigating the provision of medical assistance programs.

[Repealed.]

WV Legislature

§16-1-22c. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

[Repealed.]

WV Legislature