WEST VIRGINIA CODE CHAPTER 16 ARTICLE 29G

WV Legislature

§16-29G-1. Purpose.

(a) The purpose of this article is to create the West Virginia Health Information Network under the oversight of the Health Care Authority to promote the design, implementation, operation and maintenance of a fully interoperable statewide network to facilitate public and private use of health care information in the state.

(b) It is intended that the network be a public-private partnership for the benefit of all of the citizens of this state.

(c) The network is envisioned to support and facilitate the following types of electronic transactions or activities:

(1) Automatic drug-drug interaction and allergy alerts;

(2) Automatic preventive medicine alerts;

(3) Electronic access to the results of laboratory, X ray, or other diagnostic examinations;

(4) Disease management;

(5) Disease surveillance and reporting;

(6) Educational offerings for health care providers;

(7) Health alert system and other applications related to homeland security;

(8) Links to evidence-based medical practice;

(9) Links to patient educational materials;

(10) Medical record information transfer to other providers with the patient's consent;

(11) Physician order entry;

(12) Prescription drug tracking;

(13) Registries for vital statistics, cancer, case management, immunizations and other public health registries;

(14) Secured electronic consultations between providers and patients;

(15) A single-source insurance credentialing system for health care providers;

(16) Electronic health care claims submission and processing; and

(17) Any other electronic transactions or activities as determined by legislative rules

WV Legislature

promulgated pursuant to this article.

(d) The network shall ensure the privacy of patient health care information.

WV Legislature

§16-29G-1a. Transfer of West Virginia Health Information Network.

(a) As used in this article, the following mean:

(1) "Agreement" means a document that may be entered into between the network board and the corporation;

(2) "Assets" means the tangible and intangible personal property of the network on the transfer date, including all assignable grants, all obligated funds on deposit in the network account, agreements and contracts;

(3) "Corporation" means any nonstock, nonprofit corporation to be established under the chapter thirty-one;

(4) "Network" means the West Virginia Health Information Network; and

(5) "Network account" means the West Virginia Health Information Network Account.

(b) By December 31, 2017, the network board of directors shall transfer the existing network, the associated assets and liabilities to a private nonprofit corporation organized under chapter thirty-one e of this code.

(c) The network board of directors may enter into agreements as they determine are appropriate to implement the transfer. The agreements are exempt from the bidding and public sale requirements, from the approval of contractual agreements by the Department of Administration or the Attorney General and from the requirements of chapter five-a of this code.

(d) The initial corporation board of directors may consist of any current members of the network board of directors. The current appointed network directors shall continue to serve until the transfer is complete. Notwithstanding any other provisions of this code to the contrary, officers and employees of the network may be transferred considered for employment with to the corporation, and any such employment shall be deemed exempt from the requirements and limitations imposed by §6B-2-5 and any legislative rules promulgated thereunder.

(e) The corporation shall have all powers afforded to a nonprofit corporation by law and is limited to those powers enumerated in this article.

(f) The corporation shall not be a department, unit, agency or instrumentality of the state.

(g) The corporation is not subject to the provisions of article nine-a, chapter six of this code, Open Government Proceeding; the provisions of article two, chapter six-c of this code, the West Virginia Public Employees Grievance Procedure; the provisions of article six, chapter twenty-nine of this code, Civil Service System; or the provisions of chapter twenty-nine-b of this code, Freedom of Information; article twelve, chapter twenty-nine of this code, State

WV Legislature

Insurance; article ten, chapter five, of this code, West Virginia Public Employees Retirement Act, or the provisions of article sixteen, chapter five, of this code, West Virginia Public Employees Insurance Act.

(h) The Secretary of the Department of Health may designate the corporation as the state's health information exchange, and shall have the authority to make sole source grants or enter into sole source contracts with the corporation pursuant to §5A-3-10c of this code.

(i) The Secretary of the Department of Health shall have access to the data free of charge subject to the provisions of applicable state and federal law.

WV Legislature

§16-29G-2. Creation of West Virginia Health Information Network board of directors; powers of the board of directors.

(a) The network is created under the Health Care Authority for administrative, personnel and technical support purposes. The network shall be managed and operated by a board of directors. The board of directors is an independent, self-sustaining board with the powers specified in this article.

(b) The board is part-time. Each member shall devote the time necessary to carry out the duties and obligations of members on the board.

(c) Members appointed by the Governor may pursue and engage in another business or occupation or gainful employment that is not in conflict with his or her duties as a member of the board.

(d) The board shall meet at such times as the chair may decide. Eight members of the board are a quorum for the purposes of the transaction of business and for the performance of any duty.

(e) A majority vote of the members present is required for any final determination by the board. Voting by proxy is not allowed.

(f) The Governor may remove any board member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.

(g) The board shall consist of seventeen members, designated as follows:

(1) The Dean of the West Virginia University School of Medicine or his or her designee;

(2) The Dean of the Marshall University John C. Edwards School of Medicine or his or her designee;

(3) The President of the West Virginia School of Osteopathic Medicine or his or her designee;

(4) The Secretary of the Department of Health or his or her designee;

(5) The President of the West Virginia Board of Pharmacy or his or her designee;

(6) The Director of the Public Employees Insurance Agency or his or her designee;

(7) The Chief Technology Officer of the Office of Technology or his or her designee;

(8) The Chair of the Health Care Authority or his or her designee;

(9) The President of the West Virginia Hospital Association or his or her designee;

(10) The President of the West Virginia State Medical Association or his or her designee;

WV Legislature

(11) The Chief Executive Officer of the West Virginia Health Care Association or his or her designee;

(12) The Executive Director of the West Virginia Primary Care Association or his or her designee; and

(13) Five public members that serve at the will and pleasure of the Governor and are appointed by the Governor with advice and consent of the Senate as follows:

(i) One member with legal expertise in matters concerning the privacy and security of health care information;

(ii) Two physicians actively engaged in the practice of medicine in the state;

(iii) One member engaged in the business of health insurance who is employed by a company that has its headquarters in West Virginia; and

(iv) The chief executive officer of a West Virginia corporation working with West Virginia health care providers, insurers, businesses and government to facilitate the use of information technology to improve the quality, efficiency and safety of health care for West Virginians.

(h) The Governor shall appoint one of the board members to serve as chair of the board at the Governor's will and pleasure. The board shall annually select one of its members to serve as vice chair. The Chair of the Health Care Authority shall serve as the secretary-treasurer of the board.

(i) The public members of the board shall serve a term of four years and may serve two consecutive terms. At the end of a term, a member of the board shall continue to serve until a successor is appointed. Those members designated in subdivisions (1) through (12), inclusive, subsection (g) of this section shall serve on the board only while holding the position that entitle them to membership on the board.

(j) The board may propose the adoption or amendment of rules to the Health Care Authority to carry out the objectives of this article.

(k) The board may appoint committees or subcommittees to investigate and make recommendations to the full board. Members of such committees or subcommittees need not be members of the board.

(l) Each member of the board and the board's committees and subcommittees is entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

WV Legislature

§16-29G-3. Powers and duties.

The network shall have the following duties:

(1) To develop a community-based health information network to facilitate communication of patient clinical and financial information designed to:

(A) Promote more efficient and effective communication among multiple health care providers, including, but not limited to, hospitals, physicians, payers, employers, pharmacies, laboratories and other health care entities;

(B) Create efficiencies in health care costs by eliminating redundancy in data capture and storage and reducing administrative, billing and data collection costs;

(C) Create the ability to monitor community health status; and

(D) Provide reliable information to health care consumers and purchasers regarding the quality and cost-effectiveness of health care, health plans and health care providers;

(2) To develop or design other initiatives in furtherance of the network's purpose;

(3) To report and make recommendations to the Health Care Authority.

The network is granted all other incidental powers, including, but not limited to, the following:

(A) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers, subject to the availability of funds: Provided, That the provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article;

(B) Acquire by gift or purchase, hold or dispose of real and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(C) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties;

(D) Represent the state with respect to national health information network initiatives;

(E) Perform any and all other activities in furtherance of its purpose or as directed by the Health Care Authority.

WV Legislature

§16-29G-4. Creation of the West Virginia Health Information Network account; authorization of Health Care Authority to expend funds to support the network.

(a) All moneys collected shall be deposited in a special revenue account in the state Treasury known as the West Virginia Health Information Network Account. Expenditures from the fund shall be for the purposes set forth in this article 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 fulfillment of the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2007, expenditures are authorized from collections rather than pursuant to appropriations by the Legislature.

(b) Consistent with section eight, article twenty-nine-b of this chapter, the Health Care Authority's provision of administrative, personnel, technical and other forms of support to the network is necessary to support the activities of the Health Care Authority board and constitutes a legitimate, lawful purpose of the Health Care Authority board. Therefore, the Health Care Authority is hereby authorized to expend funds from its Health Care Cost Review Fund, established under section eight, article twenty-nine-b of this chapter, to support the network's administrative, personnel and technical needs and any other network activities the Health Care Authority deems necessary.

(c) Notwithstanding section ten, article three, chapter twelve of this code, on the transfer date, the encumbered amounts on deposit in the West Virginia Health Information Network Account shall be paid over to the corporation, the account shall be closed and subsection (a) of this section shall be of no further effect.

WV Legislature

§16-29G-5. Immunity from suit; limitation of liability.

The network is not a health care provider and is not subject to claims under article seven-b, chapter fifty-five of this code. No person who participates or subscribes to the services or information provided by the network is liable in any action for damages or costs of any nature, in law or equity, which result solely from that person's use or failure to use network information or data that was imputed or retrieved in accordance with the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations under the act, state confidentiality laws and the rules of the network as approved by the Health Care Authority. In addition, no person is subject to antitrust or unfair competition liability based on membership or participation in the network, which provides an essential governmental function for the public health and safety and enjoys state action immunity.

WV Legislature

§16-29G-6. Property rights.

(a) All persons providing information and data to the network shall retain a property right in that information or data, but grant to the other participants or subscribers a nonexclusive license to retrieve and use that information or data in accordance with the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations under the act, state confidentiality laws and the rules proposed by the Health Care Authority.

(b) All processes or software developed, designed or purchased by the network shall remain its property subject to use by participants or subscribers in accordance with the rules or regulations proposed by the Health Care Authority.

WV Legislature

§16-29G-7. Legislative rule-making authority; resolution of disputes.

(a) The Health Care Authority is hereby authorized to propose rules under and pursuant to article twenty-nine-b of this chapter to carry out the objectives of this article.

(b) To resolve disputes under this article or the rules proposed herein among participants, subscribers or the public, the Health Care Authority is hereby authorized to conduct hearings and render decisions under and pursuant to section twelve, article twenty-nine-b of this chapter.

WV Legislature

§16-29G-8. Privacy; protection of information.

(a) The Health Care Authority shall ensure that patient specific protected health information be disclosed only in accordance with the patient's authorization or best interest to those having a need to know, in compliance with state confidentiality laws and the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations under the act.

(b) The health information, data and records of the network shall be exempt from disclosure under the provisions of chapter twenty-nine-b of this code.

WV Legislature