
WEST VIRGINIA CODE CHAPTER 9
ARTICLE 2

WV Legislature

§9-2-1. Department of Human Services.

Until January 1, 2024, the division of human services within the Department of Health and Human Resources shall have those powers and duties respecting the administration of the assistance programs as authorized, granted and imposed by this chapter and elsewhere by law. Beginning January 1, 2024, the Department of Human Services 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 assistance programs as authorized, granted and imposed by this chapter and elsewhere by law.

§9-2-1a. Department of Health and Human Resources.

[Repealed.]

WV Legislature

§9-2-2. Secretary to be administrative head of department; appointment; not to hold other office or engage in political activity.

The Secretary of the Department of Human Services 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.

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.

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.

§9-2-3. Acceptance of federal-state assistance and federal assistance.

The state assents to the purposes of federal-state assistance and federal assistance, accepts federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the state Treasury and the receipt of other forms of assistance by the department for expenditure, disbursement, and distribution by the department in accordance with the provisions of this chapter and the conditions imposed by applicable federal laws, rules and regulations.

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§9-2-3a. Authorized exemption from federal law; exceptions.

Pursuant to the authority and option granted by 21 U.S.C. §862a(d)(1)(A) to the states, West Virginia exempts all individuals domiciled within the state from the application of 21 U.S.C. §862a(a)(2) unless the offense of conviction has as an element thereof misuse of supplemental nutrition assistance program benefits, loss of life, or the causing of physical injury.

WV Legislature

§9-2-4. Organization of department of welfare.

Within limits of state appropriations and federal grants and subject to provisions of state and federal laws, rules and regulations, the commissioner shall organize the department into such offices, divisions, agencies and other administrative units, and, consistent with the requirements of article six, chapter twenty-nine of this code, shall appoint and employ for the department such deputies, assistants and employees, as may in his judgment be necessary or desirable to carry out fully and in an orderly, efficient and economical manner the powers, duties and responsibilities of the department and of his office.

§9-2-5. Administering the state assistance programs; information and data to be supplied by other agencies.

(a) The department shall administer the state assistance programs, for which responsibility it shall have:

(1) All powers, not inconsistent with state law, as may be necessary for this state to obtain maximum federal funds made available for federal-state assistance within whatever limits or restrictions may be imposed by, or may exist by reason of the amount of state funds appropriated for the assistance; and

(2) All powers, not inconsistent with state law, as may be necessary for the disbursement and distribution of assistance in as prompt, fair, orderly, efficient and economical manner as possible.

(b) Notwithstanding any other provision of this code to the contrary, each, agency, commission or board of state government shall make available to the department information and data it collects about any applicant for or recipient of any type assistance to determine if an applicant or recipient is qualified or eligible for any such assistance.

§9-2-6. Secretary of Department of Human Services; powers and duties.

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

- (1) Coordinate efforts with the Secretary of Health 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;
- (2) Promulgate, amend, revise, and rescind legislative rules and policies respecting qualifications for receiving assistance consistent with or permitted by federal laws, rules, and policies, but not inconsistent with state law: *Provided*, That rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of §16-2E-1 *et seq.* of this code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-7 of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by §30-15-7 of this code;
- (3) Obtain by purchase or lease grounds, buildings, office, or other space, equipment, facilities, and services as may be necessary for the execution and administration of the secretary's powers: *Provided*, That the provisions of §5A-10-1 *et seq.* of this code are followed;
- (4) Contract with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships, or individuals: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed;
- (5) Contract to implement professional health care, managed care, actuarial and health care-related monitoring, quality review/utilization, claims processing, and independent professional consultant contracts for the Medicaid program: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed.
- (6) Accept gifts or grants, whether in money, land, services, or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund may revert to the general revenue funds of this state. No expenses incurred pursuant to this special fund may be a charge against the general funds of this state;
- (7) Establish within the department an Office of Inspector General for the purpose of conducting and supervising investigations, performing inspections, evaluations, and review, and providing quality control for the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, inspection, evaluation, review, or other activity oversight of public

integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General: *Provided*, That beginning January 1, 2024, the provisions of this subdivision expire and shall be superseded by the provisions of §16-1-22 of this code.

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

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

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

(11) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance, and federal assistance, and which are not inconsistent with state law;

(12) Organize within the department a board of review, consisting of a chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, the board of review to have such powers of a shall review nature and such additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance: *Provided*, That beginning January 1, 2024, the provisions of this subdivision expire and shall be superseded by the provisions of §16-1-22 of this code.

(13) Provide by rules, review and appeal procedures within the department of Health and Human Resources as may be required by applicable federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, and as will provide applicants

for, and recipients of, all classes of welfare assistance an opportunity to be heard by the board of review, a member thereof, or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance: *Provided*, That beginning January 1, 2024, the provisions of this subdivision expire and shall be superseded by the provisions of §16-1-22 of this code.

(14) Provide by rules, consistent with requirements of applicable federal laws and rules, application forms and application procedures for public assistance;

(15) Provide locations for making applications for public assistance;

(16) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of public assistance;

(17) Delegate to the personnel of the department all powers and duties vested in the secretary;

(18) Make reports as may be required by applicable federal laws and rules respecting assistance;

(19) Invoke any legal, equitable, or special remedies for the enforcement of the provisions of this chapter;

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

(21) Develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud;

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

(23) Annually allocate Child Protective Services workers by districts of the Bureau for Social Services and report the allocation process to the Legislative Oversight Commission on Health and Human Resources Accountability by July 1 each year.

§9-2-6a. Secretary to develop caseload standards; committee; definitions.

The secretary shall develop caseload standards based on the actual duties of employees in each program area of the department and may take into consideration existing professional caseload standards. Standards shall be reasonable and achievable.

A caseload standards committee shall be established and composed of two employees from each program area in each region. The members shall be elected by the employees from each program area from among all the employees in the program area. A subcommittee composed of the members from each program of services provided shall meet with the appropriate office director to develop caseload standards for each program. The committee shall meet at least twice yearly and shall report recommendations to the commissioner through the personnel advisory committee representative under existing procedures.

Representatives of an employee organization may serve in an advisory role.

The caseload standards which are developed establishing minimum and maximum caseloads shall be advisory for the department in the hiring of staff and in individual caseload assignments, and may be used as a basis of the Department of Human Services personal services budget request to the governor and the Legislature.

As used in this section:

"Caseload standards" means a measurable numerical minimum and maximum workload which an employee can reasonably be expected to perform in a normal workday or workweek, based on the number, variety and complexity of cases handled or number of different job functions performed.

"Professional caseload standards" means standards established by national standard setting authorities, when they exist, or caseload standards used in other states which have similar job titles.

§9-2-7. State's participation in federal work incentive program.

The state of West Virginia hereby acknowledges that the Congress of the United States has enacted legislation amending the Social Security Act to permit states to establish work incentive programs. The commissioner is hereby authorized to transfer moneys from any appropriate public assistance grant account under his control to the special fund, administered by the United States secretary of labor, created by such amendments. Any moneys transferred by the commissioner to the aforesaid special fund shall be considered as money expended for welfare grants. The commissioner is further empowered to promulgate rules, establish plans and perform any other acts necessary to implement this state's participation in the aforesaid work incentive program.

The commissioner is directed and authorized to cooperate and coordinate his activities in regard to such program with the commissioner of the West Virginia department of employment security as contemplated by section sixteen-a, article two, chapter twenty-one-a of the Code of West Virginia.

§9-2-8. Information and referral services.

(a) Each local human services office shall compile, maintain and post a current list of donated food banks and other emergency food providers in the area served by the local food stamp office and refer individuals who need food to local programs that may be able to provide assistance.

(b) The department shall use its existing statewide toll free telephone number to provide emergency food information and to refer needy individuals to local programs that may be able to provide assistance. The department shall publish the telephone number for referrals in the emergency telephone numbers section of local telephone books. The department shall display this telephone number in all its offices that issue food stamps.

§9-2-9. Secretary to develop Medicaid monitoring and case management.

[Repealed]

WV Legislature

§9-2-9a. Agreements between the Secretary and three higher education institutions.

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: *Provided*, That any contract entered into under the provisions of subdivision five, section six of this article, for the provision of Medicaid services by a risk-bearing entity is not exempt from the provisions of §5A-3-1 *et seq.*, of this code.

§9-2-9b.

Repealed.

Acts, 2013 Reg. Sess., Ch. 100.

WV Legislature

§9-2-9c. Behavioral Mental Health Services Fund created.

There is created in the State Treasury a special revenue account to be designated the "Behavioral Mental Health Services Fund" which is an interest-bearing account that may be invested and retain all earnings. On or before August 1, 2010, the State Treasurer shall make a one-time transfer of \$14,750,000 from Fund 1509 - Consumer Protection Recovery Fund, administered by the Attorney General, into the Behavioral Mental Health Services Fund. All moneys transferred to this fund shall be expended in accordance with the settlement provisions of *State of West Virginia v. Eli Lilly and Company, Inc.*, United States District Court of the Eastern District of New York, Civil Action No. 06-CV-5826. Nothing in this article may be construed to mandate additional funding or to require any additional appropriation by the Legislature.

§9-2-10. Collection of copayments by health care providers; penalties.

(a) The secretary is directed to institute a program by January 1, 1994, which requires the payment and collection of copayments. Such program shall conform with Section 447.53, Chapter 42 of the Code of Federal Regulations, and the amount of such copayments shall be determined in accordance with the provisions of Sections 447.54 and 447.55, Chapter 42 of the Code of Federal Regulations. The secretary shall complete all federal requirements necessary to implement this section, including the submission of any amendment to the state Medicaid plan, immediately following the effective date of this section.

(b) Any individual or entity receiving reimbursement from this state under the medical assistance program of the Social Security Act is required to collect such copayments: *Provided*, That in accordance with Section 447.15, Chapter 42 of the Code of Federal Regulations, no such individual or entity shall refuse care or services to any Medicaid-eligible individual because that individual is unable to pay such copayment. The amount of copayments collected shall be reported to the secretary.

(c) After February 1, 1994, any person, firm, corporation or other entity who willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device or artifice on behalf of himself, itself or others, fails to attempt to collect copayments as required by this section, shall be liable for payment of a civil money penalty in the amount of \$100 for each occurrence of willful failure to collect a required copayment.

(d) If it comes to the attention of the secretary that a person or other entity is failing to attempt to collect copayments as mandated, the matter shall be referred to the Medicaid fraud control unit for investigation and referral for prosecution pursuant to the provisions of article seven of this chapter.

§9-2-11. Limitation on use of funds.

No funds from the Medicaid program accounts may be used to pay for the performance of an abortion unless the abortion is permitted by §16-2R-3 of this code.

WV Legislature

§9-2-12. Coverage for patient cost of clinical trials.

(a) The provisions of this section and section twelve-a of this article apply to the health plans regulated by this article.

(b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the Social Security Act.

(c) A policy, plan or contract subject to this section shall provide coverage for patient cost to a member in a clinical trial, as a result of:

(1) Treatment provided for a life-threatening condition; or

(2) Prevention of, early detection of or treatment studies on cancer.

(d) The coverage under subsection (c) of this section is required if:

(1)(A) The treatment is being provided or the studies are being conducted in a Phase II, Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or

(B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for any other life-threatening condition and has therapeutic intent;

(2) The treatment is being provided in a clinical trial approved by:

(A) One of the national institutes of health;

(B) An NIH cooperative group or an NIH center;

(C) The FDA in the form of an investigational new drug application or investigational device exemption;

(D) The federal department of Veterans Affairs; or

(E) An institutional review board of an institution in the state which has a multiple project assurance contract approved by the office of protection from research risks of the national institutes of health;

(3) The facility and personnel providing the treatment are capable of doing so by virtue of their experience, training and volume of patients treated to maintain expertise;

(4) There is no clearly superior, noninvestigational treatment alternative;

(5) The available clinical or preclinical data provide a reasonable expectation that the treatment will be more effective than the noninvestigational treatment alternative;

(6) The treatment is provided in this state: Provided, That, if the treatment is provided

outside of this state, the treatment must be approved by the payor designated in subsection (a) of this section;

(7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles and is otherwise subject to all restrictions and obligations of the health plan; and

(8) Reimbursement for treatment by an out of network or noncontracting provider shall be reimbursed at a rate which is no greater than that provided by an in network or contracting provider. Coverage shall not be required if the out of network or noncontracting provider will not accept this level of reimbursement.

(e) Payment for patient costs for a clinical trial is not required by the provisions of this section, if:

(1) The purpose of the clinical trial is designed to extend the patent of any existing drug, to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage relating to additional clinical indications for an existing drug; or

(2) The purpose of the clinical trial is designed to keep a generic version of a drug from becoming available on the market; or

(3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or repackaged version of an existing drug.

(f) Any provider billing a third party payor for services or products provided to a patient in a clinical trial shall provide written notice to the payor that specifically identifies the services as part of a clinical trial.

(g) Notwithstanding any provision in this section to the contrary, coverage is not required for Phase I of any clinical trial.

§9-2-12a. Definitions.

For purposes of section twelve of this article:

(a) A "clinical trial" is a study that determines whether new drugs, treatments or medical procedures are safe and effective on humans. To determine the efficacy of experimental drugs, treatments or procedures, a study is conducted in four phases including the following:

Phase II: The experimental drug or treatment is given to, or a procedure is performed on, a larger group of people to further measure its effectiveness and safety.

Phase III: Further research is conducted to confirm the effectiveness of the drug, treatment or procedure, to monitor the side effects, to compare commonly used treatments and to collect information on safe use.

Phase IV: After the drug, treatment or medical procedure is marketed, investigators continue testing to determine the effects on various populations and to determine whether there are side effects associated with long-term use.

(b) "Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group.

(c) "Cooperative group" includes:

- (1) The national cancer institute clinical cooperative group;
- (2) The national cancer institute community clinical oncology program;
- (3) The AIDS clinical trial group; and
- (4) The community programs for clinical research in AIDS.

(d) "FDA" means the federal food and drug administration.

(e) "Life-threatening condition" means that the member has a terminal condition or illness that according to current diagnosis has a high probability of death within two years, even with treatment with an existing generally accepted treatment protocol.

(f) "Member" means a policyholder, subscriber, insured, certificate holder or a covered dependent of a policyholder, subscriber, insured or certificate holder.

(g) "Multiple project assurance contract" means a contract between an institution and the federal department of health and human services that defines the relationship of the institution to the federal department of health and human services and sets out the responsibilities of the institution and the procedures that will be used by the institution to

protect human subjects.

(h) "NIH" means the national institutes of health.

(i) "Patient cost" means the routine costs of a medically necessary health care service that is incurred by a member as a result of the treatment being provided pursuant to the protocols of the clinical trial. Routine costs of a clinical trial include all items or services that are otherwise generally available to beneficiaries of the insurance policies. "Patient cost" does not include:

(1) The cost of the investigational drug or device;

(2) The cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided to the member for purposes of the clinical trial;

(3) Services customarily provided by the research sponsor free of charge for any participant in the trial;

(4) Costs associated with managing the research associated with the clinical trial including, but not limited to, services furnished to satisfy data collection and analysis needs that are not used in the direct clinical management of the participant; or

(5) Costs that would not be covered under the participant's policy, plan, or contract for noninvestigational treatments;

(6) Adverse events during treatment are divided into those that reflect the natural history of the disease, or its progression, and those that are unique in the experimental treatment. Costs for the former are the responsibility of the payor as provided in section two of this article, and costs for the later are the responsibility of the sponsor. The sponsor shall hold harmless any payor for any losses and injuries sustained by any member as a result of his or her participation in the clinical trial.

§9-2-13. Judicial review of decisions of contested cases.

[Repealed.]

WV Legislature