

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991



ENROLLED

Com. Sub. for
HOUSE BILL No. 2461

(By Mr. *Speaker Mr. Chambers and*)
Del. Burk
[By Request of the Executive]

Passed *March 9,* 1991

In Effect *From* Passage

1991 MAR 20 PM 4:52
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

RECEIVED

1991 MAR 20 PM 4:52

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2461

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed March 9, 1991; in effect from passage.]

AN ACT to repeal sections four and six, article one, and section five-a, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article one of said chapter; and to further amend said chapter sixteen by adding thereto a new article, designated article one-a, all relating to the West Virginia health care planning commission; abolishing the board of health; promulgation of rules by the secretary of the department of health and human resources; providing legislative findings; creating the West Virginia health care planning commission and providing for the designation and appointment of members thereto and meetings thereof; continuing and providing for the state health plan and the regional health advisory councils; defining specific health planning duties of the commission, including requiring the commission to hold six public hearings by the thirtieth day of September, one thousand nine hundred ninety-one; to present by the first day of November, one thousand nine hundred ninety-one, an initial report regarding alternative systems of access to health care for all state residents, recommendations for legislative and administrative

initiatives consistent with certain principles; to prepare by July 1, 1992 amendments to the state health plan regarding certificate of need standards; to present by December 1, 1992 a report making further legislative and administrative proposals, proposing guidelines for expenditures, licensing, and regulatory initiatives, and recommending the future role of the commission; creating the legislative health care oversight committee; providing for funding; and providing a termination date of July 1, 1993.

Be it enacted by the Legislature of West Virginia:

That sections four and six, article one, and section five-a, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section seven, article one of said chapter be amended and reenacted; and that said chapter sixteen be further amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1. STATE DIVISION OF HEALTH.

§16-1-7. Promulgation of rules and regulations; references to board to mean secretary of department of health and human resources.

1 The secretary of the department of health and human
2 resources shall have the power to promulgate such rules
3 and regulations, in accordance with the provisions of
4 chapter twenty-nine-a of the code, as are necessary and
5 proper to effectuate the purposes of this chapter and
6 prevent the circumvention and evasion thereof: *Pro-*
7 *vided*, That no rules or regulations shall be promulgated
8 or enforced restricting the subdivision or development
9 of any parcel of land within which the individual tracts,
10 lots or parcels exceed two acres each in total surface
11 area and which individual tracts, lots or parcels have
12 an average frontage of not less than one hundred fifty
13 feet even though the total surface area of said tract, lot
14 or parcel equals or exceeds two acres in total surface
15 area, and which tracts are sold, leased or utilized only
16 as single family dwelling units. The provisions next
17 above notwithstanding, nothing in this section shall be
18 construed to abate the authority of the department of

19 health and human resources to: (1) Restrict the subdivi-
20 sion or development of such tract for any more intense
21 or higher density occupancy than such single family
22 dwelling unit; (2) promulgate and enforce rules and
23 regulations applicable to single family dwelling units
24 for single family dwelling unit sanitary sewerage
25 disposal systems; or (3) restrict any subdivision or
26 development which might endanger the public health,
27 the sanitary condition of streams, or sources of water
28 supply. The secretary shall have the power to appoint
29 or designate advisory councils of professionals in the
30 areas of hospitals, nursing homes, barbers and beauti-
31 cians, postmortem examinations, mental health and
32 mental retardation centers and such other areas as it
33 deems necessary to advise the secretary on rules and
34 regulations. Such rules and regulations shall include,
35 but not be limited to, the regulation of:

36 (1) The sanitary condition of all institutions and
37 schools, whether public or private, public conveyances,
38 dairies, slaughterhouses, workshops, factories, labor
39 camps, all other places open to the general public and
40 inviting public patronage or public assembly, or
41 tendering to the public any item for human consump-
42 tion, and places where trades or industries are
43 conducted;

44 (2) Occupational and industrial health hazards, the
45 sanitary conditions of streams, sources of water supply,
46 sewerage facilities and plumbing systems, and the
47 qualifications of personnel connected with any of such
48 facilities, without regard to whether such supplies or
49 systems, are publicly or privately owned; and the design
50 of all water systems, plumbing systems, sewerage
51 systems, sewage treatment plants, excreta disposal
52 methods, swimming pools in this state, whether publicly
53 or privately owned;

54 (3) Food and drug standards, including cleanliness,
55 proscription of additives, proscription of sale, and other
56 requirements in accordance with article seven of this
57 chapter, as are necessary to protect the health of the
58 citizens of this state;

59 (4) The training and examination requirements for
60 emergency medical service attendants and mobile
61 intensive care paramedics; the designation of the health
62 care facilities, health care services, and the industries
63 and occupations in the state which must have emergency
64 medical service attendants and mobile intensive care
65 paramedics employed, and the availability, communica-
66 tions, and equipment requirements with respect thereto;

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

69 (6) Other health-related matters which the depart-
70 ment of health is authorized to supervise, and for which
71 the rule-making authority has not been otherwise
72 assigned.

73 Notwithstanding any other provision of this code to
74 the contrary, whenever in this code there is a reference
75 to the state board of health it shall be construed to mean
76 and shall be a reference to the secretary of the state
77 department of health and human resources.

ARTICLE 1A. HEALTH CARE PLANNING COMMISSION.

§16-1A-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Health Care Planning Commission Act."

§16-1A-2. Legislative findings.

1 Based upon careful review of information from health
2 care providers, governmental entities, third-party
3 payers, consumers, and other persons involved or
4 otherwise interested in the state's health care system,
5 the Legislature makes the following findings:

6 (1) Over one out of five state residents do not have
7 health insurance, and, thus, must forego basic health
8 care when they are needed and cannot afford to pay for
9 health services when they are provided. At least half of
10 the uninsured are wage earners and their dependents.
11 The number of uninsured is increasing at an alarming
12 rate;

13 (2) Children, low-income working and unemployed
14 persons, disabled persons, and persons with chronic
15 health conditions are especially unable to obtain access

16 to health care. Nearly one hundred thousand children
17 in West Virginia have no health insurance. Failing to
18 obtain preventive and primary care because of their
19 inability to pay, uninsured people endure unnecessary
20 pain, suffering, and permanent physical and mental
21 health problems;

22 (3) The state has twenty-five percent more uncompen-
23 sated charity care than the national average. The costs
24 of providing health care to people who cannot afford to
25 pay are charged in the form of higher health care costs
26 to other health care consumers, especially public and
27 private employers providing health insurance for their
28 employees. The resulting cost shift is an invisible tax,
29 spread among the already insured, and is an unplanned,
30 inefficient method of providing basic preventive,
31 primary and acute care for uninsured and underinsured
32 residents of the state.

33 (4) The costs and charges of health care and health-
34 related insurance are increasing dramatically. Costs of
35 health care services are inappropriately increased by
36 underutilization of certain health care facilities, over-
37 utilization of certain tests and techniques, and inappropri-
38 ate use of health care facilities by consumers;

39 (5) The cost of private health insurance is becoming
40 prohibitively expensive for large portions of society,
41 especially small business employers. Disputes over the
42 allocation of health care costs are a continuing source
43 of labor-management conflict;

44 (6) The already low number of health care providers
45 in rural areas of the state is declining. Forty-six counties
46 in the state and large segments of the state's population
47 are medically underserved, especially with regard to
48 primary care, including family practice physicians.
49 Children and their mothers, whether insured or not, are
50 particularly unable to find adequate health costs;

51 (7) Too few graduates of the state's medical schools
52 remain in the state to practice in underserved specialties
53 and in underserved regions of the state; and

54 (8) Improvements in the health care system are
55 impeded by lack of resources and statutory authority at

56 existing public agencies and the lack of a single entity
57 charged with developing and implementing proposals to
58 reduce health care costs while increasing access to
59 appropriate basic, quality health care.

**§16-1A-3. Health care planning commission created;
composition; appointment; terms; oaths;
removal; vacancies; expenses and compen-
sation; meetings; quorum; records.**

1 There is hereby created the West Virginia health care
2 planning commission within the office of the governor.
3 There shall be seven members of the commission. Two
4 of the members, designated at the will and pleasure of
5 the governor, shall be full time state officials having
6 involvement and impact on health policy for the state.
7 The other five members shall be appointed by the
8 governor with the advice and consent of the Senate, and
9 shall not be state officials employed by the state on a
10 full time basis. Members shall be appointed on the basis
11 of their ability, experience and interest in health care
12 and on their ability to represent the diverse geographic
13 health care needs of the state. No more than three of
14 the five appointed members may be of the same political
15 party and no person serving as a member of the
16 Legislature, or employed in an advisory or support staff
17 capacity at the time of the enactment or amendment of
18 this article shall, during or for a five year period
19 subsequent to his or her employment, be appointed or
20 serve as a member of the commission. Appointments
21 shall be made by the governor no later than the fifteenth
22 day of April, one thousand nine hundred ninety-one. The
23 governor may remove a commission member only for
24 cause. Within thirty days of removal or resignation of
25 an appointed person, the governor shall appoint a
26 qualified person to fill the vacancy. All members of the
27 commission shall be citizens of the state. Each appointed
28 member of the commission may be paid fifty dollars for
29 each day of performing services as a member and
30 reimbursed for all reasonable and necessary expenses
31 actually incurred in the performance of his or her
32 duties, in the same manner as are members of the
33 Legislature.

34 The governor shall designate a chairperson and a vice
35 chairperson from among the commission members. A
36 staff person designated by the commission shall serve as
37 the secretary-treasurer of the commission but shall not
38 be a voting member. A majority of the members of the
39 commission shall constitute a quorum, and a quorum
40 must be present for the commission to conduct business.
41 Each member of the commission is a voting member.
42 Unless bylaws adopted by the commission require a
43 larger number, action may be taken by majority vote of
44 the members present. The commission shall meet at
45 least twice per month for the first year and shall have
46 staff perform the day-to-day planning functions of the
47 commission. Records of the commission shall be kept in
48 accordance with the provisions of article nine-a, chapter
49 six of this code. The commission may exercise all powers
50 necessary or appropriate to carry out the health
51 planning purposes of this article, said powers being
52 related to developing a comprehensive state health plan.

§16-1A-4. State health plan.

1 (a) The commission shall be responsible for coordinat-
2 ing and developing the health planning research efforts
3 of the state and for amending and modifying the state
4 health plan.

5 (b) The state health plan heretofore approved by the
6 governor shall remain in effect until replaced or
7 modified as follows: The commission staff, contracting
8 as necessary with consultants and experts, shall prepare
9 drafts of all proposed amendments to or modifications
10 of the state health plan and shall then hold public
11 hearings on the amendments or modifications.
12 Following the public hearings, the commission shall
13 submit the proposed amendments or modifications to the
14 governor for his or her approval. Within thirty days of
15 receiving said proposed amendments and modifications,
16 the governor shall either approve or disapprove all or
17 part of said amendments and modifications, and, for any
18 portion of amendments or modifications not approved,
19 shall specify the reason or reasons for nonapproval. Any
20 portions of the amendments or modifications not
21 approved by the governor shall be revised and resubmit-

22 ted to the governor. The commission shall submit to the
23 legislature's joint committee on government and finance
24 any and all amendments or modifications approved by
25 the governor for that committee's review and comment.

26 (c) In addition to other duties required by other
27 provisions of this article, the state health plan shall
28 describe those institutional health services which entail
29 annual operating costs in excess of the expenditure
30 minimum for annual operating costs which are needed
31 to provide for the well-being of persons receiving care
32 within the state. At a minimum, these shall include
33 acute inpatient (including psychiatric inpatient, obstet-
34 rical inpatient, and neonatal inpatient), rehabilitation,
35 and long-term care services. The state health plan shall
36 also describe other health services needed to provide for
37 the well-being of persons receiving care within the state,
38 including, at a minimum, preventive, ambulatory, and
39 home health services and treatment for alcohol and drug
40 abuse. The state health plan shall also describe the
41 number and type of resources, including facilities,
42 personnel, major medical equipment, and other resour-
43 ces required to meet the goal of the plan and shall state
44 the extent to which existing health services facilities are
45 in need of modernization, conversion to other uses, or
46 closure and the extent to which new health services
47 facilities need to be constructed or acquired. Finally, the
48 state health plan shall contain a detailed statement of
49 goals.

50 (d) The regional health advisory councils created
51 under the former provisions of section five-a, article two-
52 d, chapter sixteen of this code shall be continued in each
53 planning and development council region of the state.
54 Each council shall meet at least quarterly and shall
55 review health services and health care needs and
56 organize public hearings on the health care issues
57 within the region. The councils shall regularly report to
58 the commission regarding recommendations on health
59 services and health care needs and concerns in their
60 respective regions. Each council shall consist of three
61 members from each county within the planning and
62 development region, with one member from each county

63 who is actively involved in health care delivery in the
 64 county for which said member is appointed, and two
 65 members from each county who have no direct affilia-
 66 tion with any health care provider and who are
 67 consumers of health care services. Members shall be
 68 appointed by the governor from lists submitted by the
 69 respective county commissions for three year terms. No
 70 more than two members appointed from each county
 71 may be from the same political party. Each county
 72 commission shall designate which members from its
 73 county has a term of one year, who has a term of two
 74 years and who has a term of three years, all beginning
 75 the first day of April, one thousand nine hundred ninety-
 76 one. Thereafter, members shall serve for three-year
 77 terms. The presence of a majority of members at council
 78 meetings shall constitute a quorum for purposes of
 79 transacting business. The commission shall designate at
 80 least one staff person to provide support and assistance
 81 to the regional health advisory councils.

82 (e) All state agencies shall transfer forthwith to the
 83 commission all health-related data and information
 84 reasonably requested by the commission in a form
 85 reasonably requested by the commission in order to
 86 provide the commission with the information it needs to
 87 carry out the health planning functions required by this
 88 and other sections in this article. The division of health
 89 and health care cost review authority shall transmit to
 90 the commission such data, records, reports, analyses and
 91 summaries filed, collected and developed by the division
 92 as are necessary to health planning functions or related
 93 to health planning activities.

§16-1A-5. Specific health planning duties of commission.

1 (a) On or before the thirtieth day of September, one
 2 thousand nine hundred ninety-one, the commission shall
 3 hold at least six public hearings throughout the state for
 4 the purposes of gathering information and opinions
 5 regarding health services and any other health needs
 6 and concerns of health care providers, consumers, and
 7 other interested parties. The dates and places of said
 8 hearings shall be made public by the first day of July,
 9 one thousand nine hundred ninety-one. Each hearing

10 shall be attended by the director and at least one
11 commission member.

12 (b) On or before the first day of November, one
13 thousand nine hundred ninety-one, the commission shall
14 present to the governor and the Legislature a report
15 containing the following:

16 (1) The components of basic, quality health services to
17 which all persons in the state should be entitled;

18 (2) A description of alternative systems, including all-
19 payer and single payer health insurance models,
20 designed to provide all persons in the state with access
21 to basic, quality health care services, detailing the costs,
22 benefits and detriments of each system;

23 (3) A statement as to the reasons that too few
24 graduates of the state's medical schools remain in the
25 state to practice in underserved specialties and under-
26 served regions of the state;

27 (4) Specific recommendations to the governor and the
28 legislature regarding legislative, regulatory, and
29 executive initiatives designed to develop a health care
30 system in this state that is consistent with the following
31 principles:

32 (i) That all persons in the state have access to
33 appropriate basic, quality health services;

34 (ii) That such access be attained without reliance on
35 any form of uncompensated care or unreimbursed
36 services;

37 (iii) That the financial burden of providing health
38 services to all residents of the state be equitably shared
39 by government, employers, health care providers, and
40 individual citizens;

41 (iv) That consumers be allowed flexibility and free-
42 dom of health care provider choice, within a cost-
43 effective managed health services delivery system;

44 (v) That health care providers receive fair and
45 equitable compensation for their services in a timely and
46 efficient manner;

47 (vi) That a system of reimbursement for health
48 services be developed that minimizes administrative
49 costs and prevents health care providers from needing
50 to differentiate among consumers' sources of payment;

51 (vii) That health care providers have freedom to
52 choose their practice settings, while being provided with
53 incentives to participate in cost-effective systems of
54 health services and to serve underserved areas and
55 populations of the state;

56 (viii) That quality of care be promoted by the ongoing
57 development and enforcement of acceptable standards
58 for health care providers and facilities; and

59 (ix) That illness and injury prevention, wellness, and
60 other health promotion programs and incentives be
61 developed, including preventive health services to
62 improve the health of all residents of the state and
63 reduce the need for expensive long-term care: *Provided,*
64 That the principles defined in this subsection shall not
65 be construed to require the state to create or to fund any
66 specific health care programs.

67 (c) On or before the first day of July, one thousand
68 nine hundred ninety-two, the commission staff shall
69 develop and the commission shall present to the
70 governor proposed amendments and modifications to the
71 certificate of need standards contained in the state
72 health plan heretofore approved by the governor. Said
73 amendments and modifications shall address, among
74 other things, the need to increase the availability of
75 community-based, primary and preventive health
76 services within the state. Within thirty days of receiving
77 said proposed amendments and modifications, the
78 governor shall either approve or disapprove all or part
79 of said amendments and modifications, and, for any
80 portion of amendments or modifications not approved,
81 shall specify the reason or reasons for nonapproval. Any
82 portions of the amendments or modifications not
83 approved by the governor shall be revised and resubmit-
84 ted to the governor by the first day of December, one
85 thousand nine hundred ninety-two.

86 (d) On or before the first day of December, one
87 thousand nine hundred ninety-two, the commission shall
88 present to the governor and the Legislature a report on
89 the health care system in this state that addresses all
90 aspects of the state's health care system and that
91 recommends a comprehensive set of legislative and
92 administrative proposals designed to improve the state's
93 health care system. Said report shall include proposed
94 amendments to the state health plan that will provide
95 guidelines, based upon the principles contained in
96 section 7(b)(4)(i)-(ix), for future public health-related
97 expenditures, licensing, and regulatory initiatives, and
98 shall make specific recommendations for implementa-
99 tion of said guidelines, including what function the
100 commission should play in future health planning and
101 implementation. All public health-related expenditures,
102 licensing, and regulatory initiatives shall be consistent
103 with the standards and guidelines of these guidelines
104 once approved by governor for inclusion in the state
105 health plan: *Provided*, That any proposed changes to
106 public health-related expenditures, licensing, and
107 regulatory initiatives, other than those requiring only
108 executive action, shall be submitted to the legislature in
109 the form of proposed legislation.

110 (e) In performing its all of the above duties, the
111 commission shall solicit input from each of the regional
112 health advisory councils located in this state.

§16-1A-6. Legislative health care oversight committee.

1 The president of the Senate and the speaker of the
2 House of Delegates shall each designate five members
3 of their respective houses, at least one of whom from
4 each house shall be a member of the minority party, to
5 serve on a legislative oversight committee charged with
6 immediate and ongoing oversight of the commission
7 created by this article. This committee shall study,
8 review and examine the work of the commission and its
9 staff and monitor the development and implementation
10 of the state health plan. The committee shall review and
11 make recommendations to the Legislature regarding
12 any plan or policy proposed by the commission.

§16-1A-7. Funding.

1 To the extent the operation and activities of the
2 commission are not funded through the general revenue
3 fund, the health care cost review authority shall provide
4 two hundred thousand dollars and the insurance
5 commission shall provide one hundred fifty thousand
6 dollars, through interagency transfer to the commission:
7 *Provided*, That any amounts so transferred from the
8 insurance commission shall be transferred from special
9 revenues in account number 8016. The commission shall
10 actively solicit grants and other nonstate funding. The
11 commission shall solicit and is authorized to accept
12 foundation and other nonstate financial support in order
13 to carry out the health planning purposes of this article.

§16-1A-8. Effective date and termination date.

1 This article shall be in effect from passage. The
2 commission shall terminate July 1, 1993, unless ex-
3 tended by legislation before that date.

Enr. Com. Sub. for H. B. 2461] 14

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Thomas Beck
Chairman Senate Committee

Ernest C. Masoe
Chairman House Committee

Originating in the House.

Takes effect from passage.

Harriet A. Albee
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Kitt Burdette
President of the Senate

Bob C. Clark
Speaker of the House of Delegates

The within *is approved* this the *20th*
day of *March*, 1991

Walter D. Rouse
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/91

Time 11:35 AM