WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1991

ENROLLED
Com. S.ub. for
HOUSE BILL No. 2416

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

Passed March 9, 1991

In Effect From Passage
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article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section seven, article one of said chapter be amended and reenacted; and that said chapter sixteen be further amended by adding thereto a new article,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.

The secretary of the department of health and human resources shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof: Provided, That no rules or regulations shall 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 one hundred fifty feet even though the total surface area of said 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. The provisions next above notwithstanding, nothing in this section shall be construed to abate the authority of the department of
health and human resources to: (1) Restrict the subdivision or development of such tract for any more intense
or higher density occupancy than such single family
dwelling unit; (2) promulgate and enforce rules and
regulations applicable to single family dwelling units
for single family dwelling unit sanitary sewerage
disposal systems; or (3) restrict any subdivision or
development which might endanger the public health,
the sanitary condition of streams, or sources of water
supply. The secretary shall have the power to appoint
or designate advisory councils of professionals in the
areas of hospitals, nursing homes, barbers and beauti-
cians, postmortem examinations, mental health and
mental retardation centers and such other areas as it
deems necessary to advise the secretary on rules and
regulations. Such rules and regulations shall include,
but not be limited to, the regulation of:

(1) 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 consump-
tion, and places where trades or industries are
conducted;

(2) 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 such
facilities, without regard to whether such 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, swimming pools in this state, whether publicly
or privately owned;

(3) Food and drug standards, including cleanliness,
proscription of additives, proscription of sale, and other
requirements in accordance with article seven of this
chapter, as are necessary to protect the health of the
citizens of this state;
(4) The training and examination requirements for emergency medical service attendants and mobile intensive care paramedics; the designation of the health care facilities, health care services, and the industries and occupations in the state which must have emergency medical service attendants and mobile intensive care paramedics employed, and the availability, communications, and equipment requirements with respect thereto;

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

(6) Other health-related matters which the department of health is authorized to supervise, and for which the rule-making authority has not been otherwise assigned.

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

ARTICLE 1A. HEALTH CARE PLANNING COMMISSION.


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

§16-1A-2. Legislative findings.

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

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

(2) Children, low-income working and unemployed persons, disabled persons, and persons with chronic health conditions are especially unable to obtain access
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(2) Nearly one hundred thousand children in West Virginia have no health insurance. Failing to obtain preventive and primary care because of their inability to pay, uninsured people endure unnecessary pain, suffering, and permanent physical and mental health problems;

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

(4) The costs and charges of health care and health-related insurance are increasing dramatically. Costs of health care services are inappropriately increased by underutilization of certain health care facilities, overutilization of certain tests and techniques, and inappropriate use of health care facilities by consumers;

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

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

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

(8) Improvements in the health care system are impeded by lack of resources and statutory authority at
existing public agencies and the lack of a single entity
charged with developing and implementing proposals to
reduce health care costs while increasing access to
appropriate basic, quality health care.

§16-lA-3. Health care planning commission created;
composition; appointment; terms; oaths;
removal; vacancies; expenses and compensation; meetings; quorum; records.

There is hereby created the West Virginia health care
planning commission within the office of the governor.
There shall be seven members of the commission. Two
of the members, designated at the will and pleasure of
the governor, shall be full time state officials having
involvement and impact on health policy for the state.
The other five members shall be appointed by the
governor with the advice and consent of the Senate, and
shall not be state officials employed by the state on a
full time basis. Members shall be appointed on the basis
of their ability, experience and interest in health care
and on their ability to represent the diverse geographic
health care needs of the state. No more than three of
the five appointed members may be of the same political
party and no person serving as a member of the
Legislature, or employed in an advisory or support staff
capacity at the time of the enactment or amendment of
this article shall, during or for a five year period
subsequent to his or her employment, be appointed or
serve as a member of the commission. Appointments
shall be made by the governor no later than the fifteenth
day of April, one thousand nine hundred ninety-one. The
governor may remove a commission member only for
cause. Within thirty days of removal or resignation of
an appointed person, the governor shall appoint a
qualified person to fill the vacancy. All members of the
commission shall be citizens of the state. Each appointed
member of the commission may be paid fifty dollars for
each day of performing services as a member and
reimbursed for all reasonable and necessary expenses
actually incurred in the performance of his or her
duties, in the same manner as are members of the
Legislature.
The governor shall designate a chairperson and a vice chairperson from among the commission members. A staff person designated by the commission shall serve as the secretary-treasurer of the commission but shall not be a voting member. A majority of the members of the commission shall constitute a quorum, and a quorum must be present for the commission to conduct business. Each member of the commission is a voting member. Unless bylaws adopted by the commission require a larger number, action may be taken by majority vote of the members present. The commission shall meet at least twice per month for the first year and shall have staff perform the day-to-day planning functions of the commission. Records of the commission shall be kept in accordance with the provisions of article nine-a, chapter six of this code. The commission may exercise all powers necessary or appropriate to carry out the health planning purposes of this article, said powers being related to developing a comprehensive state health plan.

§16-1A-4. State health plan.

(a) The commission shall be responsible for coordinating and developing the health planning research efforts of the state and for amending and modifying the state health plan.

(b) The state health plan heretofore approved by the governor shall remain in effect until replaced or modified as follows: The commission staff, contracting as necessary with consultants and experts, shall prepare drafts of all proposed amendments to or modifications of the state health plan and shall then hold public hearings on the amendments or modifications. Following the public hearings, the commission shall submit the proposed amendments or modifications to the governor for his or her approval. Within thirty days of receiving said proposed amendments and modifications, the governor shall either approve or disapprove all or part of said amendments and modifications, and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the governor shall be revised and resubmit-
tions or modifications approved by the governor for that committee's review and comment.

(c) In addition to other duties required by other provisions of this article, the state health plan shall describe those institutional health services which entail annual operating costs in excess of the expenditure minimum for annual operating costs which are needed to provide for the well-being of persons receiving care within the state. At a minimum, these shall include acute inpatient (including psychiatric inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services. The state health plan shall also describe other health services needed to provide for the well-being of persons receiving care within the state, including, at a minimum, preventive, ambulatory, and home health services and treatment for alcohol and drug abuse. The state health plan shall also describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goal of the plan and shall state the extent to which existing health services facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health services facilities need to be constructed or acquired. Finally, the state health plan shall contain a detailed statement of goals.

(d) The regional health advisory councils created under the former provisions of section five-a, article two-d, chapter sixteen of this code shall be continued in each planning and development council region of the state. Each council shall meet at least quarterly and shall review health services and health care needs and organize public hearings on the health care issues within the region. The councils shall regularly report to the commission regarding recommendations on health services and health care needs and concerns in their respective regions. Each council shall consist of three members from each county within the planning and development region, with one member from each county
who is actively involved in health care delivery in the
county for which said member is appointed, and two
members from each county who have no direct affiliation
with any health care provider and who are
consumers of health care services. Members shall be
appointed by the governor from lists submitted by the
respective county commissions for three year terms. No
more than two members appointed from each county
may be from the same political party. Each county
commission shall designate which members from its
county has a term of one year, who has a term of two
years and who has a term of three years, all beginning
the first day of April, one thousand nine hundred ninety-
one. Thereafter, members shall serve for three-year
terms. The presence of a majority of members at council
meetings shall constitute a quorum for purposes of
transacting business. The commission shall designate at
least one staff person to provide support and assistance
to the regional health advisory councils.

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

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

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

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

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

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

(3) A statement as to the reasons that too few graduates of the state’s medical schools remain in the state to practice in underserved specialties and underserved regions of the state;

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

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

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

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

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

(v) That health care providers receive fair and equitable compensation for their services in a timely and efficient manner;
(vi) That a system of reimbursement for health services be developed that minimizes administrative costs and prevents health care providers from needing to differentiate among consumers' sources of payment;

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

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

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

(c) On or before the first day of July, one thousand nine hundred ninety-two, the commission staff shall develop and the commission shall present to the governor proposed amendments and modifications to the certificate of need standards contained in the state health plan heretofore approved by the governor. Said amendments and modifications shall address, among other things, the need to increase the availability of community-based, primary and preventive health services within the state. Within thirty days of receiving said proposed amendments and modifications, the governor shall either approve or disapprove all or part of said amendments and modifications, and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the governor shall be revised and resubmitted to the governor by the first day of December, one thousand nine hundred ninety-two.
(d) On or before the first day of December, one thousand nine hundred ninety-two, the commission shall present to the governor and the Legislature a report on the health care system in this state that addresses all aspects of the state's health care system and that recommends a comprehensive set of legislative and administrative proposals designed to improve the state's health care system. Said report shall include proposed amendments to the state health plan that will provide guidelines, based upon the principles contained in section 7(b)(4)(i)-(ix), for future public health-related expenditures, licensing, and regulatory initiatives, and shall make specific recommendations for implementation of said guidelines, including what function the commission should play in future health planning and implementation. All public health-related expenditures, licensing, and regulatory initiatives shall be consistent with the standards and guidelines of these guidelines once approved by governor for inclusion in the state health plan: *Provided, That any proposed changes to public health-related expenditures, licensing, and regulatory initiatives, other than those requiring only executive action, shall be submitted to the legislature in the form of proposed legislation.*

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

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

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

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the day of ____, 1991.

[Signature]
Governor