The following has special meaning:
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| **2021 WV S 12** | **Author:** Maroney<br>**Version:** Enacted<br>**Version Date:** 03/16/2021 |

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 12

BY SENATORS MARONEY, TAKUBO, AND SWOPE

[Passed March 4, 2021; in effect 90 days from passage (June 2, 2021)]

AN ACT to amend and reenact §16-2-2, §16-2-9, and §16-2-11 of the Code of West Virginia, 1931, as amended, all relating to local health departments; defining terms; permitting an appointing entity to remove a board member; creating an appeal process for adverse determinations; requiring rules by a local board of health to be published; requiring rules to be approved, disapproved or amended and approved by an appointing entity; providing that a rule currently in effect is not subject to approval, unless amended; providing an emergency rule process; requiring that an approved rule shall be filed with the appropriate entity; clarifying that a rule is only effective in the jurisdiction where the appointing entity grants approval; requiring rules shall be kept as public records; establishing an emergency health rule process; and permitting the state health officer to develop policies that each of the local departments must comply with when a statewide public health emergency is declared.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

“Appointing authority” means the county commission or municipality, or combination thereof, that authorized the creation or combination of the local board of health, in whatever form it presently exists;

“Basic public health services” means those services that are necessary to protect the health of the public and that a local board of health must provide. The three areas of basic public health services are communicable and reportable disease prevention and control, community health promotion, and environmental health protection;

“Bureau” means the Bureau for Public Health in the Department of Health and Human Resources;

“Clinical and categorical programs” means those services provided to individuals of specified populations and usually focus on health promotion or disease prevention. These services are not considered comprehensive health care but focus on specific health issues such as breast and cervical cancer, prenatal and pediatric health services, and home health services;

“Combined local board of health” is one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

“Commissioner” means the Commissioner of the Bureau for Public Health, who is the state health officer;

“Communicable and reportable disease prevention and control” is one of three areas of basic public health services each local board of health must offer. Services shall include disease surveillance, case investigation and follow-up, outbreak investigation, response

to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis, and other communicable and reportable diseases;

“Community health promotion” is one of three areas of basic public health services each local board of health must offer. Services shall include assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community’s priority health needs, mobilization of a community around identified priorities, and monitoring the progress of community health education services;

“County board of health” is one form of organization for a local board of health and means a local board of health serving a single county;

“Department” means the West Virginia Department of Health and Human Resources;

“Director” or “director of health” means the state health officer. Administratively within the department, the Bureau for Public Health through its commissioner carries out the public health function of the department, unless otherwise assigned by the secretary;

“Environmental health protection” is one of three areas of basic public health services each local board of health must offer. Services shall include efforts to protect the community from environmental health risks including, inspection of housing, institutions, recreational facilities, sewage, and wastewater facilities; inspection and sampling of drinking water facilities; and response to disease outbreaks or disasters;

“Enhanced public health services” means services that focus on health promotion activities to address a major health problem in a community, are targeted to a particular population and assist individuals in this population to access the health care system, such as lead and radon abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services are services a local health department may offer;

“Local board of health”, “local board”, or “board” means a board of health serving one or more counties or one or more municipalities or a combination thereof;

“Local health department” means the staff of the local board of health;

“Local health officer” means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the commissioner;

“Municipal board of health” is one form of organization for a local board of health and means a board of health serving a single municipality;

“Performance-based standards” means generally accepted, objective standards such as rules or guidelines against which a local health department’s level of performance can be measured;

“Primary care services” means health care services, including medical care, that emphasize first contact patient care and assume overall and ongoing responsibility for the patient in health maintenance and treatment of disease. Primary care services are services that local boards of health may offer if the board has determined that an unmet need for primary care services exists in its service area. Basic public health services funding may not be used to support these services;

“Program plan” or “plan of operation” means the annual plan for each local board of health that must be submitted to the commissioner for approval;

“Secretary” means the Secretary of the Department of Health and Human Resources; and

“Service area” means the territorial jurisdiction of the local board of health.

§16-2-9. Local board of health; terms of appointment; reappointment; oath of office; vacancies; removal; compensation; expenses.

(a) The term of office for members selected and appointed to a local board of health pursuant to the provisions of this article is five years. Members may serve until their duly qualified successors are selected and appointed by vote of the original appointing authority. Members may be reappointed for additional terms of five years. Board members’ oaths of office shall be duly recorded before entering into or discharging any duties of the office.

(b) Any vacancy on any local board of health shall be filled by appointment of the original appointing authority. This appointment is for the unexpired term.

(c) A local board, or the appointing authority, of health may remove any of its members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its members for official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification. With respect to a combined board, a county commission or appointing authority may remove any of its appointed members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its appointed members for official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification. A local board of health, or any of its members may be removed by the state health officer for failure or refusal to comply with duties as set forth by statute or rule. Upon removal, a successor or successors to the member or members removed shall immediately be appointed by the original appointing body pursuant to the provisions of this article.

(d) Each member of a local board of health may receive compensation as determined by the local board for attending meetings of and other activities for the board as required by law: Provided, That this compensation may not exceed $100 per day. Each member of a

local board may be reimbursed for all reasonable and necessary travel and other expenses actually incurred by the member in the performance of duties as a member of the local board.

§16-2-11. Local board of health; powers and duties.

(a) Each local board of health created, established, and operated pursuant to the provisions of this article shall:

(1) Provide the following basic public health services and programs in accordance with state public health performance-based standards:

(i) Community health promotion including assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community's priority health needs, mobilization of a community around identified priorities and monitoring the progress of community health education services;

(ii) Environmental health protection including the promoting and maintaining of clean and safe air, water, food, and facilities, and the administering of public health laws as specified by the commissioner as to general sanitation, the sanitation of public drinking water, sewage and wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

(iii) Communicable or reportable disease prevention and control including disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis, and other communicable and reportable diseases;

(2) Appoint a local health officer to serve at the will and pleasure of the local board of health with approval of the commissioner;

(3) Submit a general plan of operation to the commissioner for approval, if it receives any state or federal money for health purposes. This program plan shall be submitted annually and comply with provisions of the local board of health standards administrative rule;

(4) Provide equipment and facilities for the local health department that are in compliance with federal and state law;

(5) Permit the commissioner to act by and through it, as needed. The commissioner may enforce all public health laws of this state, the rules and orders of the secretary, any county commission orders or municipal ordinances of the board's service area relating to public health, and the rules and orders of the local board within the service area of a local board. The commissioner may enforce these laws, rules, and orders when, in the opinion of the commissioner, a public health emergency exists or when the local board fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged against the counties or municipalities concerned;

(6) Deposit all moneys and collected fees into an account designated for local board of health purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury in the service area. The moneys for a county board of health shall be deposited with the county treasury in the service area. The moneys for a combined local board of health shall be deposited in an account as designated in the plan of combination: Provided, That nothing contained in this subsection is intended to conflict with the provisions of §16-1-1 et seq. of this code;

(7) Submit vouchers or other instruments approved by the board and signed by the local health officer or designated representative to the county or municipal treasurer for payment of necessary and reasonable expenditures from the county or municipal public health funds: Provided, That a combined local board of health shall draw upon its public health funds account in the manner designated in the plan of combination;

(8) Participate in audits, be in compliance with tax procedures required by the state and annually develop a budget for the next fiscal year;

(9) Perform public health duties assigned by order of a county commission or by municipal ordinance consistent with state public health laws; and

(10) Enforce the public health laws of this state and any other laws of this state applicable to the local board.

(b) Each local board of health created, established, and operated pursuant to the provisions of this article may:

(1) Provide primary care services, clinical and categorical programs, and enhanced public health services;

(2) Employ or contract with any technical, administrative, clerical, or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the Division of Personnel under §29-10-6 of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

(3) (A) Adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia State Department of Health and Human Resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation, and spread of disease.

(B) The commissioner shall establish a procedure by which adverse determinations by local health departments may be appealed, unless otherwise provided for, for the purpose of ensuring a consistent interpretation of state public health laws and rules of the Department of Health and Human Resources.

(C) When rules are adopted, promulgated, or amended, the local board of health shall place notice in the State Register and on their organization's web page setting forth a notice of proposed action, including the text of the new rule or the amendment and the date, time, and place for receipt of public comment.

(D) All rules shall be approved, disapproved, or amended and approved by the county commission or appointing entity within 30 days of approval from the local board of health.

(E) All rules of a combined local board of health shall be approved, disapproved, or amended and approved by each appointing entity within 30 days of approval from the combined local board of health. If one appointing entity approves and another other does not approve a rule from a combined local board health department, the rule is only in effect in the jurisdiction of the appointing entity which approved the rule.

(F) An approved rule shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality, or both, and shall be kept by the clerk or recording officer in a separate book as public records.

(G) A rule currently in effect is not subject to approval, unless amended, from the county commission or appointing authority.

(H) If there is an imminent public health emergency, approval of the county commission or appointing authority is not necessary before the rule goes into effect but shall be approved or disapproved by the county commission or appointing authority within 30 days after the rules are effective;

(4) Accept, receive, and receipt for money or property from any federal, state, or local governmental agency, from any other public source or from any private source, to be used for public health purposes or for the establishment or construction of public health facilities;

(5) Assess, charge, and collect fees for permits and licenses for the provision of public health services: Provided, That permits and licenses required for agricultural activities may not be assessed, charged, or collected: Provided, however, That a local board of health may assess, charge, and collect all of the expenses of inspection of the physical plant and facilities of any distributor, producer, or pasteurizer of milk whose milk distribution, production, or pasteurization facilities are located outside this state but who sells or distributes in the state, or transports, causes or permits to be transported into this state, milk or milk products for resale, use or consumption in the state and in the service area of the local board of health. A local board of health may not assess, charge, and collect the expenses of inspection if the physical plant and facilities are regularly inspected by another agency of this state or its governmental subdivisions or by an agency of another state or its governmental subdivisions certified as an approved inspection agency by the commissioner. No more than one local board of health may act as the regular inspection agency of the physical plant and facilities; when two or more include an inspection of the physical plant and facilities in a regular schedule, the commissioner shall designate one as the regular inspection agency;

(6) Assess, charge, and collect fees for services provided by the local health department: Provided, That fees for services shall be submitted to and approved by the commissioner: Provided, however, That a local health department may bill health care service fees to a payor which includes, but is not limited to, Medicaid, a Medicaid Managed Care Organization, and the Public Employees Insurance Agency for medical services provided: Provided further, That health care service fees billed by a local health department are not subject to commissioner approval and may be at the payor's maximum allowable rate;

(7) Contract for payment with any municipality, county, or board of education, for the provision of local health services or for the use of public health facilities. Any contract shall be in writing and permit provision of services or use of facilities for a period not to exceed one fiscal year. The written contract may include provisions for annual renewal by agreement of the parties; and

(8) Retain and make available child safety car seats, collect rental and security deposit fees for the expenses of retaining and making available child safety car seats, and conduct public education activities concerning the use and preventing the misuse of child safety car seats: Provided, That this subsection is not intended to conflict with the provisions of §17C-15-46 of this code: Provided, however, That any local board of health offering a child safety car seat program or employee or agent of a local board of health is immune from civil or criminal liability in any action relating to the improper use, malfunction, or inadequate maintenance of the child safety car seat and in any action relating to the improper placement, maintenance, or securing of a child in a child safety car seat.

(c) The local boards of health are charged with protecting the health and safety, as well as promoting the interests of the citizens of West Virginia. All state funds appropriated by the Legislature for the benefit of local boards of health shall be used for provision of basic public health services.

(d) If the Governor declares a statewide public health emergency, the state health officer may develop emergency policies and guidelines that each of the local health departments responding to the emergency must comply with in response to the public health emergency.

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