

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 617

By Senator Barrett

[Passed March 11, 2023; in effect 90 days from

passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article
2 designated, §16-5W-1, §16-5W-2, §16-5W-3, and §16-5W-4; and to repeal §27-8-2b and
3 §27-8-3 of said code; all relating to behavioral health services; establishing a mental
4 health ombudsman; providing authority to the ombudsman; providing an exemption of
5 consumer information from the Freedom of Information Act; requiring reporting; requiring a
6 workforce study; outlining program data required to be included in the study; requiring
7 recommendations for hourly pay; creating an annual capitation review; repealing
8 antiquated code; and repealing antiquated terminology.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5W. REGULATION OF BEHAVIORAL HEALTH.

§16-5W-1.

Reporting.

1 (a) The Office of the Inspector General shall send to county prosecutors any findings that
2 may be subject to criminal prosecution in cases of abuse and neglect with IDD. The Office of the
3 Inspector General shall send to the P&A the findings of any cases involving instances of
4 substantiated abuse or neglect involving a person with a developmental disability.

5 (b) An annual report shall be submitted to the Legislative Oversight Commission on Health
6 and Human Resources Accountability including:

7 (1) All instances where abuse and neglect cases involving IDD at any location has been
8 substantiated by the Office of the Inspector General.

9 (2) The county or region where the substantiated abuse or neglect occurred;

10 (2) The descriptive category of the abuse and neglect;

11 (3) The type of setting where the abuse and neglect occurred;

12 (4) Whether the abuse and neglect information was turned over to the county prosecutor
13 and law enforcement;

14 (5) The name of the provider, if the provider is involved, who is charged with the care of the
15 individual; and

16 (6) The age range and gender of the individual.

17 (c) In instances where abuse and/or neglect leads to the death of an individual, the
18 department shall send a letter, within 30 days after the findings where substantiated, to the Senate
19 President, the Speaker of the House, and the chairs of LOCHHRA outlining the information above
20 about the case.

§16-5W-2. Independent Mental Health Ombudsman.

1 (a) (1) The Office of the Inspector General shall continue an independent mental health
2 ombudsman;

3 (2) The duties of the mental health ombudsman shall include, but are not limited to, the
4 following:

5 (A) Advocating for the well-being, treatment, safety, and rights of consumers of mental
6 health care facilities or psychiatric hospital;

7 (B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a
8 consumer of a mental health care facility or psychiatric hospital, relating to action, inaction, or
9 decisions of providers of mental and behavioral health, of public agencies, or social service
10 agencies, which may adversely affect the health, safety, welfare, and rights of a consumer of a
11 mental health care facility or psychiatric hospital; and

12 (C) Monitoring the development and implementation of federal, state, and local legislation,
13 regulations, and policies with respect to mental and behavioral health care and services;

14 (3) The mental health ombudsman shall participate in ongoing training programs related to
15 his or her duties or responsibilities;

16 (4)(A) Information relating to any investigation of a complaint that contains the identity of
17 the complainant or consumer shall remain confidential except:

18 (i) Where imminent risk of serious harm is communicated directly to the mental health
19 ombudsman or his or her staff; or

20 (ii) Where disclosure is necessary to the Office of Health Facility Licensure and
21 Certification in order for such office to determine the appropriateness of initiating an investigation
22 to determine facility compliance with applicable rules of licensure, certification, or both;

23 (B) The mental health ombudsman shall maintain confidentiality with respect to all matters
24 including the identities of complainants, witnesses, or others from whom information is acquired,
25 except insofar as disclosures may be necessary to enable the mental health care ombudsman to
26 carry out duties of the office or to support recommendations;

27 (C) All information, records, and reports received by or developed by the mental health
28 ombudsman program which relate to a consumer of a mental health care facility or psychiatric
29 hospital, including written material identifying a consumer are confidential, and are not subject to
30 the provisions of §29-1-1, *et seq.* of this code, and may not be disclosed or released by the mental
31 health ombudsman program, except under the circumstances enumerated in this section;

32 (D) Nothing in this section prohibits the preparation and submission by the mental health
33 ombudsman of statistical data and reports, as required to implement the provisions of this section
34 or any applicable federal law, exclusive of any material that identifies any consumer or
35 complainant; and

36 (E) The Inspector General shall have access to the records and files of the mental health
37 ombudsman program to verify its effectiveness and quality.

§16-5W-3. Intellectual and Developmental Disabilities Waiver Program workforce study.

1 (a) By July 1, 2023, the Legislative Oversight Commission on Health and Human
2 Resources Accountability shall conduct a workforce study pertaining to the Intellectual and
3 Developmental Disabilities Waiver Program (IDDW Program). The study shall use data and
4 statistics generally relied upon by reasonably prudent individuals, and shall determine/address the
5 following:

6 (1) The categories of personnel offering services as part of the IDDW Program;

7 (2) The mean hourly pay rate for each such category of personnel, broken down by West

8 Virginia County where service is provided to patients;

9 (3) The mean hourly pay rate for each such category of personnel offering services as part
10 of programs equivalent to the IDDW Program in surrounding states.

11 (4) A comparison of the hourly pay rates identified in subdivisions 2 and 3 of this section,
12 broken down by category of personnel; and

13 (5) Any other factor the commission reasonably deems relevant to the issues.

14 (b) Within the report the commission shall make recommendations as to the
15 appropriateness of the current mean hourly pay rate for each category of IDDW Program
16 personnel, as well as any potential pay rate increases necessary to ensure that the IDDW
17 Programs can successfully recruit and retain qualified personnel.

18 (c) The commission shall issue the report by January 1, 2024.

§16-5W-4. Annual capitation rate review.

1 (a) The Bureau of Medicaid Services shall conduct an annual study reviewing the
2 adequacy and appropriateness of the reimbursement rates to providers in the IDDW Program. The
3 bureau shall also include a recommendation for any adjustment deemed appropriate, including,
4 but not limited to, annual inflationary costs, costs arising from amendments to existing contracts,
5 costs relating to recruiting and retaining personnel, and any other costs necessitating additional
6 payments to IDDW providers. The bureau may require, and contracted providers shall provide
7 financial data to the bureau to assist in the study. Without limiting the generality of the foregoing in
8 conducting this study, the bureau shall review and compare equivalent programs both in and out of
9 state in order to determine appropriate rates.

10 (b) Upon completion of the study, BMS shall provide the report to the Joint Committee of
11 Finance beginning July 1, 2024, and annually thereafter, on its findings, conclusions, and
12 recommendations, together with drafts of any legislation necessary to effectuate its
13 recommendations.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 8.

§27-8-2b. Local mental health programs — Separate account for receiving and expending gifts, bequests, donations, fees and miscellaneous income.

1 [Repealed.]

§27-8-3. Care of patients in boarding homes.

1 [Repealed.]

ARTICLE 16.