

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Introduced**

### **Senate Bill 397**

<b>FISCAL NOTE</b>
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BY SENATORS TAKUBO AND MARONEY

[Introduced February 22, 2017; Referred  
to the Committee on Judiciary; and then to the Committee  
on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §55-7K-1, §55-7K-2, §55-7K-3, §55-7K-4, §55-7K-5, §55-7K-6, §55-7K-7,  
 3 §55-7K-8, §55-7K-9, §55-7K-10, §55-7K-11 and §55-7K-12, all relating to granting  
 4 immunity to health care providers who provide medical services to low-income persons in  
 5 this state; setting out findings and intent; defining terms; providing immunity from civil  
 6 liability upon execution of a contract; setting out contract requirements; setting out contract  
 7 terms; requiring notice to patients; setting out notice contents; required reporting of  
 8 adverse incidents; requiring a quality assurance program to be developed; required  
 9 reporting to the Legislature; providing for payment of litigation costs; setting out  
 10 applicability; setting out construction of the article; and requiring rulemaking.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §55-7K-1, §55-7K-2, §55-7K-3, §55-7K-4, §55-7K-5, §55-7K-6, §55-7K-7, §55-  
 3 7K-8, §55-7K-9, §55-7K-10, §55-7K-11 and §55-7K-12, all to read as follows:

**ARTICLE 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

**§55-7K-1. Findings and Intent.**

1 West Virginia continues to face a shortage of healthcare providers. The state also  
 2 continues to face a medical community couched in fear of frivolous medical negligence actions.  
 3 This has created an air of caution within the healthcare community which has resulted in a  
 4 reluctance to treat certain segments of the state's population. Three of those classes of persons  
 5 are the uninsured, Medicaid recipients and persons receiving insurance from the Public  
 6 Employees Insurance Agency.

7 With a state which has a significant uninsured population and which has a population with  
 8 an ever increasing reliance upon public assistance programs such as Medicaid as means of  
 9 healthcare coverage, and has a significant segment of the population which is insured through  
 10 the Public Employees Insurance Agency, the Legislature needs to act to secure some type of

11 protection to health care providers against the fear of costly and often absurd litigation while also  
12 guaranteeing access to needed health care to the uninsured and those on public assistance.

13 It is the intent of the Legislature to improve access to medical care for our indigent  
14 residents by providing an additional layer of governmental protection to health care providers who  
15 offer free quality medical care to the uninsured or who offer quality medical care to persons on  
16 Medicaid and the Public Employees Insurance Agency at a reduced reimbursement rate.  
17 Therefore, healthcare providers who contract to provide such services as agents of the state shall  
18 be granted sovereign immunity; West Virginia Constitution, Article VI, Section 35.

**§55-7K-2. Definitions.**

1 The following words have the following meaning:

2 (1) "Contract" means an agreement executed between a healthcare provider and the  
3 Bureau for Medical Services to provide services to Medicaid recipients at the current state  
4 Medicaid rate or, a contract to provide services to recipients of insurance through the Public  
5 Employees Insurance Act codified at article sixteen, chapter five, of this code, or a contract  
6 executed between a healthcare provider and a governmental entity for volunteer, uncompensated  
7 services which allows the health care provider to deliver health care services to low-income  
8 recipients as an agent of the governmental entity. For services to qualify as volunteer,  
9 uncompensated services under this section, the health care provider, or any employee or agent  
10 of the health care provider, must receive no compensation from the governmental entity for any  
11 services provided pursuant to the contract and must not bill or accept compensation from the  
12 recipient, or a public or private third-party payor, for the specific services provided to the low-  
13 income recipients covered by the contract.

14 (2) "Department" means the Department of Health and Human Resources.

15 (3) "Governmental entity" means the department, the Public Employees Insurance  
16 Agency, the Bureau for Medical Services, county health departments, or a hospital owned and  
17 operated by a governmental entity.

- 18           (4) “Health care provider” or “provider” means:
- 19           (A) A birth center licensed pursuant to the provisions of article two-e of chapter sixteen of  
20 this code.
- 21           (B) A hospital licensed pursuant to article five-b of chapter sixteen of this code.
- 22           (C) A physician licensed pursuant to the provisions of article three, chapter sixteen of this  
23 code.
- 24           (D) A physician assistant licensed to practice pursuant to the provisions of article three-e,  
25 chapter sixteen of this code.
- 26           (E) An osteopathic physician licensed pursuant to article fourteen, chapter sixteen of this  
27 code.
- 28           (F) Assistants to osteopathic physicians licensed pursuant to the provisions of article  
29 fourteen-a, chapter sixteen of this code.
- 30           (G) A chiropractic physician licensed pursuant to the provisions of article sixteen, chapter  
31 sixteen of this code.
- 32           (H) A podiatric physician licensed to practice pursuant to the provisions of article three,  
33 chapter sixteen of this code.
- 34           (I) An advance practice registered nurse or a registered professional nurse licensed  
35 pursuant to the provisions of article seven, chapter sixteen of this code.
- 36           (J) Any other medical facility the primary purpose of which is to deliver human medical  
37 diagnostic services or which delivers nonsurgical human medical treatment, and which includes  
38 an office maintained by a provider.
- 39           (K) A dentist or dental hygienist licensed pursuant to the provisions of article four, chapter  
40 sixteen of this code.
- 41           (L) A free clinic that delivers only medical diagnostic services or nonsurgical medical  
42 treatment free of charge to all low-income recipients. A free clinic may receive a legislative  
43 appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or

44 nonprofit corporation to support the delivery of contracted services by volunteer health care  
45 providers, including the employment of health care providers to supplement, coordinate, or  
46 support the delivery of services. The appropriation or grant for the free clinic does not constitute  
47 compensation from the governmental entity for services provided under the contract, nor does  
48 receipt or use of the appropriation or grant constitute the acceptance of compensation under this  
49 paragraph for the specific services provided to the low-income recipients covered by the contract.

50 (M) Any other health care professional, practitioner, provider, or facility under contract with  
51 a governmental entity, including a student enrolled in an accredited program that prepares the  
52 student for licensure as any one of the professionals listed in this article.

53 (N) Any nonprofit corporation qualified as exempt from federal income taxation under  
54 section 501-a of the Internal Revenue Code, and described in section 501-c of the Internal  
55 Revenue Code, which delivers health care services provided by licensed professionals listed in  
56 this article, any federally funded community health center, and any volunteer corporation or  
57 volunteer health care provider that delivers health care services.

58 (5) "Low-income" means:

59 (A) A person who is Medicaid-eligible pursuant to the laws of this state;

60 (B) A person who is without health insurance and whose family income does not exceed  
61 two hundred percent of the federal poverty level as defined annually by the federal Office of  
62 Management and Budget; or

63 (C) Any client of the department who voluntarily chooses to participate in a program  
64 offered or approved by the department and meets the program eligibility guidelines of the  
65 department.

66 (6) "Medicaid recipient" means a person qualified for participation in the state operated  
67 Medicaid program.

68 (7) Public Employees Insurance Agency means the agency created pursuant to article  
69 sixteen, chapter five of this code.

**§55-7K-3. Immunity for health care providers providing medical services to low-income persons and recipients of public insurance.**

1       (a) A health care provider that executes a contract with a governmental entity to deliver  
2       health care services on or after the effective date of this article as an agent of the governmental  
3       entity is an agent while acting within the scope of duties pursuant to the terms of the contract:

4             (1) If the contract complies with the requirements of this section; and

5             (2) Regardless of whether the individual treated is later found to be ineligible.

6       (b) A health care provider shall continue to be an agent for thirty days after a determination  
7       of ineligibility to allow for treatment until the individual transitions to treatment by another health  
8       care provider.

9       (c) A health care provider under contract with the state may not be named as a defendant  
10       in any action arising out of medical care or treatment provided on or after the effective date of  
11       this section pursuant to contracts entered into pursuant to this section.

**§55-7K-4. Required Contract Terms.**

1       The contract must provide that:

2             (1) The right of dismissal or termination of any health care provider delivering services  
3       under the contract is retained by the governmental entity.

4             (2) The governmental entity has access to the patient records of any health care provider  
5       delivering services under the contract.

6             (3) Adverse incidents and information on treatment outcomes must be reported by any  
7       health care provider to the governmental entity if the incidents and information pertain to a patient  
8       treated pursuant to the contract. Reporting shall be in the manner and on forms established by  
9       the department in rule as set forth in this article.

10            (4) Patient selection and initial referral must be made by the governmental entity or the  
11       provider. Patients may not be transferred to the provider based on a violation of the antidumping

12 provisions of the Omnibus Budget Reconciliation Act of 1989, P.L. 101-239, and the Omnibus  
13 Budget Reconciliation Act of 1990, P.L. 101-508.

14 (5) If emergency care is required, the patient need not be referred before receiving  
15 treatment, but must be referred within forty-eight hours after treatment is commenced or within  
16 forty-eight hours after the patient has the mental capacity to consent to treatment, whichever  
17 occurs later.

18 (6) The provider is subject to supervision and regular inspection by the governmental  
19 contractor.

20 (7) As an agent of the governmental entity while acting within the scope of duties pursuant  
21 to the contract, a health care provider licensed pursuant to Chapter thirty of this code may allow  
22 a patient, or a parent or guardian of the patient, to voluntarily contribute a monetary amount to  
23 cover costs of dental laboratory work related to the services provided to the patient. This  
24 contribution may not exceed the actual cost of the dental laboratory charges.

25 (8) A governmental entity that is also a health care provider is not required to enter into a  
26 contract under this section with respect to the health care services delivered by its employees.

**§55-7K-5. Notice of agency relationship.**

1 (a) The governmental entity must provide written notice to each patient, or the patient's  
2 legal representative, receipt of which must be acknowledged in writing, that the provider is an  
3 agent of the governmental entity and that the exclusive remedy for injury or damage suffered as  
4 the result of any act or omission of the provider or of any employee or agent thereof acting within  
5 the scope of duties pursuant to the contract is by commencement of an action pursuant to the  
6 provisions of article two, chapter fourteen of this code.

7 (b) With respect to any federally funded community health center, the notice requirements  
8 may be met by posting in a place conspicuous to all persons a notice that the federally funded  
9 community health center is an agent of the governmental entity and that the exclusive remedy for  
10 injury or damage suffered as the result of any act or omission of the provider or of any employee

11 or agent thereof acting within the scope of duties pursuant to the contract is by commencement  
12 of an action pursuant to the provisions of article two, chapter fourteen of this code.

**§55-7K-6. Incident Reporting.**

1 (a) If an incident report as required by four of this article involves a professional license  
2 pursuant to the provisions of Chapter thirty of this code, the department shall receive and review  
3 incident reports in an effort to determine whether it involves conduct by the licensee that may be  
4 subject to disciplinary action. If the department determines that the incident may be subject to  
5 disciplinary action, the report shall be forwarded to the appropriate licensing board as provided in  
6 chapter thirty of this code.

7 (b) All patient medical records and any identifying information contained in adverse  
8 incident reports and treatment outcomes which are obtained by governmental entities under this  
9 paragraph are confidential.

**§55-7K-7. Quality assurance program.**

1 The governmental entity shall establish a quality assurance program to monitor services  
2 delivered under any contract between an agency and a health care provider pursuant to this  
3 article.

**§55-7K-8. Reporting to the legislature.**

1 (a) Annually, the department shall report to the Joint Committee on Government and  
2 Finance summarizing the efficacy of access and treatment outcomes with respect to providing  
3 health care services for low-income persons pursuant to this article.

4 (b) The department shall provide an online listing of all providers participating in this  
5 program and the number of volunteer service hours and patient visits each provided. A provider  
6 may request in writing to the department to be excluded from the online listing.

**§55-7K-9. Malpractice litigation costs.**



1           Governmental entities other than the department are responsible for their own costs and  
 2 attorney’s fees for malpractice litigation arising out of health care services delivered pursuant to  
 3 this section.

**§55-7K-10. Applicability.**

1           The provisions of this article are applicable prospectively to all claims that occur and are  
 2 commenced after July 1, 2017.

**§55-7K-11. Construction.**

1           The provisions of this article operate in addition to, and not in derogation of, any of the  
 2 provisions contained in article seven-b of this chapter.

**§55-7K-12. Rulemaking.**

1           The department shall promulgate legislative rules pursuant to the provisions of article  
 2 three, chapter twenty-nine-a of this code to administer this section in a manner consistent with its  
 3 purpose to provide and facilitate access to appropriate, safe, and cost-effective health care  
 4 services and to maintain health care quality. These rules shall include, at a minimum:

- 5           (1) Required methods for determination and approval of patient eligibility and referral by  
 6 government contractors and providers;
- 7           (2) Flexibility for providers in order to serve eligible patients;
- 8           (3) Any forms and reporting requirements of this article; and
- 9           (4) The means for incident reporting as required by this article.

NOTE: The purpose of this bill is to grant sovereign immunity to healthcare workers who provide free medical care to low-income citizens or provide Medicaid services to low-income families.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.