

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2068

**FISCAL
NOTE**

BY DELEGATE ROHRBACH

[INTRODUCED FEBRUARY 8, 2017; REFERRED

TO THE COMMITTEE ON HEALTH AND HUMAN RESOURCES

THEN FINANCE.]

1 A BILL to amend and reenact §16-29G-1 and §16-29G-4 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto four new sections, designated §16-
 3 29G-1a, §16-29G-2a, §16-29G-2b and §16-29G-2c, all relating to operating and
 4 maintaining a fully interoperable statewide network to facilitate public and private use of
 5 health care information in the state through the West Virginia Health Information Network
 6 or through an alternative method determined by the board of directors of the West Virginia
 7 Health Information Network and the West Virginia Health Care Authority, and approved by
 8 the Joint Committee on Government and Finance; and, authorizing the West Virginia
 9 Health Care Authority and the board of directors of the West Virginia Health Information
 10 Network to execute agreements, transfer assets and take other actions appropriate to
 11 implement an approved alternative method of operating and maintaining the network.

Be it enacted by the Legislature of West Virginia:

1 That §16-29G-1 and §16-29G-4 of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted; and that said code be amended by adding thereto four new sections,
 3 designated §16-29G-1a, §16-29G-2a, §16-29G-2b and §16-29G-2c, all to read as follows:

ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.

§16-29G-1. Purpose.

1 (a) The purpose of this article is to create the West Virginia Health Information Network
 2 under the oversight of the Health Care Authority to promote the design, implementation, operation
 3 and maintenance of a fully interoperable statewide network to facilitate public and private use of
 4 health care information in the state.

5 (b) It is intended that the network be a public-private partnership for the benefit of all of
 6 the citizens of this state.

7 (c) The network is envisioned to support and facilitate the following types of electronic
 8 transactions or activities:

9 (1) Automatic drug-drug interaction and allergy alerts;

- 10 (2) Automatic preventive medicine alerts;
- 11 (3) Electronic access to the results of laboratory, X ray, or other diagnostic examinations;
- 12 (4) Disease management;
- 13 (5) Disease surveillance and reporting;
- 14 (6) Educational offerings for health care providers;
- 15 (7) Health alert system and other applications related to homeland security;
- 16 (8) Links to evidence-based medical practice;
- 17 (9) Links to patient educational materials;
- 18 (10) Medical record information transfer to other providers with the patient's consent;
- 19 (11) Physician order entry;
- 20 (12) Prescription drug tracking;
- 21 (13) Registries for vital statistics, cancer, case management, immunizations and other
- 22 public health registries;
- 23 (14) Secured electronic consultations between providers and patients;
- 24 (15) A single-source insurance credentialing system for health care providers;
- 25 (16) Electronic health care claims submission and processing; and
- 26 (17) Any other electronic transactions or activities ~~as determined by legislative rules~~
- 27 promulgated pursuant to this article that may assist in the operation and maintenance of a fully
- 28 interoperable statewide network to facilitate public and private use of health care information in
- 29 the state.
- 30 (d) The network shall ensure the privacy of patient health care information.
- 31 (e) The network is essential to the public health and welfare of the citizens of the state. It
- 32 must operate and be maintained in the most efficient manner and at the lowest cost practicable
- 33 but consistent with its purpose.
- 34 (f) The Office of the National Coordinator for Health Information Technology within the
- 35 United States Department of Health and Human Services has encouraged states to be creative

36 and resourceful, identifying ways to use critical but scarce resources to fill gaps while leveraging
37 existing information exchange activities.

38 (g) Use of a private nonprofit corporation to provide an interoperable health information
39 network has proven to be a successful mechanism in other states. The network may be more
40 sustainable if operated and maintained by a self-supporting organization. This organization would
41 not rely in the long-term on general revenue, grants or other public funds.

42 (h) Because the citizens of the state will greatly benefit from the most efficient and cost
43 effective method for operating and maintaining the network, state efforts to encourage and
44 support the formation of a private nonprofit corporation or a relationship with an existing private
45 nonprofit corporation may be in the clear public interest. If the network board of directors and
46 Health Care Authority determine, and the Joint Committee on Government and Finance approves,
47 that it would be most efficient and cost effective for the network to be transferred to a private
48 nonprofit corporation, then transfer of the assets of the network in exchange for assumption of
49 the liabilities and obligations of the network may be authorized.

§16-29G-1a. Definitions.

1 As used in this article, the following words shall have the following meaning:

2 (a) "Agreement" means the agreement or agreements that may be entered into between
3 the Health Care Authority or the network board, or both, and the corporation established pursuant
4 to section two-a of this article;

5 (b) "Alternative method" means any alternative method of operating and maintaining the
6 network determined to be most efficient and cost effective;

7 (c) "Approved alternative method" means an alternative method that has been approved
8 by the Joint Committee on Government and Finance;

9 (d) "Assets" means all assets of, or allocated to, the network constituting tangible and
10 intangible personal property at the transfer date, if any, and as more particularly or additionally
11 identified or supplemented in the agreement, including all assignable federal or other grants and

12 all funds on deposit in the network account;

13 (e) "Authority" or "Health Care Authority" means the West Virginia Health Care Authority;

14 (f) "Corporation" means any nonstock, nonprofit corporation to be established under the
15 general corporation laws of the state, which meets the description prescribed by section two-a of
16 this article, and any successor to such corporation;

17 (g) "Corporation board of directors" or "corporation board" means the board of directors of
18 the corporation;

19 (h) "Corporation director" means a member of the corporation board of directors;

20 (i) "Liabilities" means all liabilities of or allocated to the network at the transfer date and as
21 more particularly or additionally identified or supplemented in the agreement;

22 (j) "Network" means the West Virginia Health Information Network;

23 (k) "Network account" means the West Virginia Health Information Network Account.

24 (l) "Network board of directors" or "network board" means the board of directors of the
25 network;

26 (m) "Network director" means a member of the network board of directors; and

27 (n) "Transfer date" means the date set forth in the agreement, if any, for transfer of the
28 assets from the state, the Health Care Authority or the network board of directors, as applicable,
29 to the corporation.

§16-29G-2a. Alternative methods for network.

1 (a) The board of directors of the network, with administration, personnel and technical
2 support from the Health Care Authority, should be authorized and directed to study and determine
3 the most efficient and cost effective method for operating and maintaining the network. Upon
4 approval from the Joint Committee on Government and Finance, the network board of directors
5 and the Health Care Authority shall be authorized to take all actions necessary to implement the
6 method the network board of directors determines to be the most efficient and cost effective. This
7 may include transferring the existing network and associated assets to a private nonprofit

8 corporation or contracting with such a corporation for network services.

9 (b) No later than September 1, 2017, the network board of directors shall complete a study
10 of the current method and of alternative methods for operating and maintaining the network. The
11 network board of directors shall prepare a report outlining its findings, the method it determines
12 to be the most efficient and cost effective method for operating and maintaining an interoperable
13 health information network and, if an alternative method has been determined to be the most
14 efficient and cost effective, the process and timeframe for transitioning the current method of
15 operating and maintaining the network to the alternative method. The network board may use the
16 personnel and support of the Health Care Authority in completing this study.

17 (c) The network board of directors shall provide copies of the report to the Health Care
18 Authority no later than September 1, 2017. If the Health Care Authority has questions or
19 comments regarding the report, the network board of directors will work with the Health Care
20 Authority to answer these questions and address these comments and may make any
21 amendments or supplements to the report that the network board of directors and Health Care
22 Authority determine are appropriate. The Health Care Authority shall respond with approval or
23 rejection of the report prior to December 1, 2017. If the Health Care Authority fails to respond by
24 December 1, 2017, the network board of directors may consider the report or the amended or
25 supplemented report, as applicable, approved. If approved by the Health Care Authority, the
26 report will be forwarded to the Joint Committee on Government and Finance on December 1,
27 2017.

28 (d) If the Joint Committee on Government and Finance has questions or comments
29 regarding the report, the Health Care Authority and the network board of directors will work with
30 the Joint Committee on Government and Finance to answer these questions and address these
31 comments and may make any amendments or supplements to the report that the Joint Committee
32 on Government and Finance determines are appropriate. No later than March 1, 2018, the Joint
33 Committee on Government and Finance shall either approve or reject the report.

34 (e) The Health Care Authority and the network board of directors are authorized to enter
35 into agreements as they determine are appropriate to implement the approved alternative method,
36 if any. The agreements are exempt from the bidding and public sale requirements, from the
37 approval of contractual agreements by the Department of Administration or the Attorney General
38 and from the requirements of chapter five-a of this code.

39 (f) If the approved alternative method requires transfer of the network to a private nonprofit
40 corporation, the network board of directors is authorized to implement the initial formation and
41 organization of the corporation as provided by section two-b of this article. The network board of
42 directors and the Health Care Authority are authorized to enter into agreements with the
43 corporation as provided by section two-c of this article. For the first two fiscal years of the
44 corporation, the corporation may contract with the Health Care Authority for administration,
45 personnel, and support.

§16-29G-2b. Requirements for corporation.

1 (a) The corporation initially shall be organized as a nonprofit corporation under chapter
2 thirty-one-e of this code. The intent is that the corporation be qualified as an entity exempt from
3 federal taxation pursuant to section 501(c) of the Internal Revenue Code.

4 (b) The initial corporation board of directors shall consist of the current members of the
5 network board of directors. Thereafter, the board of directors of the corporation shall be self-
6 perpetuating and may be composed of such directors, including ex-officio directors, with such
7 terms of office as are set forth in the articles of incorporation or bylaws of the corporation. The
8 current appointed network directors shall continue to serve until they resign or their terms expire.
9 Notwithstanding any other provisions of this code to the contrary, officers and employees of the
10 state may serve as corporation directors and hold appointments to offices of the corporation.

11 (c) Unless otherwise agreed in writing by the Health Care Authority, the corporation shall
12 have an advisory committee. The advisory committee shall be comprised of those ex-officio
13 members of the network board of directors whose positions do not continue to constitute ex-officio

14 members of the corporation board of directors and not less than three representatives of the
15 participants in the network appointed by the corporation board. The advisory committee may be
16 consulted on both strategic and operational activities and may make recommendations to the
17 corporation board on development, budgets and operational direction.

18 (d) The corporation shall have all powers afforded to nonprofit corporations by law and
19 shall not require or be limited to those powers enumerated in section three of this article.

20 (e) The corporation shall not be a department, unit, agency or instrumentality of the state.

21 (1) All debts, claims, obligations and liabilities of the corporation are the debts, claims,
22 obligations and liabilities of the corporation only and not of the state, or of any department, unit,
23 agency, instrumentality, officer or employee of the state.

24 (2) The moneys of the corporation are not part of the General Revenue Fund of the state.

25 (3) The corporation is not subject to the provisions of article three, chapter five-a of this
26 code; the provisions of article nine-a, chapter six of this code; the provisions of article two, chapter
27 six-c of this code; the provisions of chapter twelve of this code; the provisions of article six, chapter
28 twenty-nine of this code; or the provisions of chapter twenty-nine-b of this code.

29 (f) The Commissioner of the Bureau for Public Health, the Commissioner of the Bureau
30 for Medical Services and the chair of the Health Care Authority, or their designated
31 representatives, shall be invited to the corporation board meetings to ensure alignment with state
32 policy direction to improve patient care quality and outcomes using evidence-based practices.

33 (g) The corporation shall report its audited financial records publicly at least annually to
34 the Health Care Authority.

35 (h) The articles of incorporation of the corporation shall provide that the assets of the
36 corporation shall be transferred to another governmental or nonprofit health information exchange
37 upon liquidation of the corporation.

§16-29G-2c. Provisions of agreement; Health Care Authority monitoring.

1 (a) The agreement or agreements entered by the Health Care Authority or the network

2 board of directors shall provide for the following:

3 (1) The corporation shall provide the state's health care community with a trusted,
4 integrated and seamless electronic structure enabling medical data exchange necessary for high-
5 quality, patient-centered care.

6 (2) Effective on the transfer date, the corporation shall assume responsibility for and shall
7 defend, indemnify and hold harmless the Health Care Authority, the network board and the state
8 with respect to all liabilities and obligations of the network pursuant to contracts and agreements
9 for commodities, services and supplies utilized by the network, and all claims for breach of
10 contract resulting from the corporation's action or failure to act after the transfer date.

11 (3) The corporation shall be required to: (i) Coordinate provider outreach and
12 communications with the Bureau for Public Health and the Bureau for Medical Services; (ii)
13 identify common business or health care outcome priorities with the Bureau for Public Health and
14 Bureau for Medical Services; and (iii) align efforts with the Bureau for Medical Services to meet
15 federal requirements for meaningful use of electronic health information.

16 (b) The agreement or agreements entered by the Health Care Authority or the network
17 board of directors may provide for the following:

18 (1) The ability to contract with another entity perform the functions described in subsection
19 (c), section one and section three of this article.

20 (2) The transfer to the corporation all of the assets of the network, including all federal
21 technology and other grants. The Health Care Authority or the network board of directors may
22 also assign to the corporation the contract with its technical services provider.

23 (3) For the first two fiscal years of the corporation, the corporation may contract with the
24 Health Care Authority for administration, personnel and support.

25 (c) The Health Care Authority shall be responsible for monitoring the corporation's
26 performance under the agreement. The Health Care Authority may employ a third party
27 certification or accrediting organization to assess the corporation's performance and competency,

28 including its credibility, efficiency, cost effectiveness and trustworthiness. This may occur
29 biennially.

30 (d) All applicable provisions of this article shall continue to apply to the network and
31 associated assets transferred to or operated by a private nonprofit corporation: *Provided, That*
32 subsection (b), section six and section seven of this article shall not continue to apply to the
33 network and associated assets transferred to or operated by a private nonprofit corporation.

**§16-29G-4. Creation of the West Virginia Health Information Network account;
authorization of Health Care Authority to expend funds to support the network.**

1 (a) All moneys collected shall be deposited in a special revenue account in the State
2 Treasury known as the West Virginia Health Information Network Account. Expenditures from the
3 fund shall be for the purposes set forth in this article and are not authorized from collections but
4 are to be made only in accordance with appropriation by the Legislature and in accordance with
5 the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of
6 article two, chapter eleven-b of this code: *Provided, That* for the fiscal year ending June 30, 2007,
7 expenditures are authorized from collections rather than pursuant to appropriations by the
8 Legislature.

9 (b) Consistent with section eight, article twenty-nine-b of this chapter, the Health Care
10 Authority's provision of administrative, personnel, technical and other forms of support to the
11 network is necessary to support the activities of the Health Care Authority board and constitutes
12 a legitimate, lawful purpose of the Health Care Authority board. Therefore, the Health Care
13 Authority is hereby authorized to expend funds from its Health Care Cost Review Fund,
14 established under section eight, article twenty-nine-b of this chapter, to support the network's
15 administrative, personnel and technical needs and any other network activities the Health Care
16 Authority deems necessary.

17 (c) The Health Care Authority and other state agencies are hereby authorized, after the
18 transfer date, to make grants to the corporation, including subgrants of federal grants, for the

19 purpose of carrying out the purposes of this article.

20 (d) Notwithstanding section ten, article three, chapter twelve of this code, on the transfer
21 date, the amounts on deposit in the West Virginia Health Information Network Account shall be
22 paid over to the corporation, the account shall be closed and subsection (a) of this section shall
23 be of no further effect.

24 (e) Notwithstanding any other provision of this article to the contrary, the transfer of the
25 network account to the corporation may be conditioned by the Health Care Authority upon the
26 repayment thereof and subject to the terms of a surplus note or other loan arrangement, as set
27 forth in the agreement. Payments received by the State Treasurer from the corporation in
28 repayment of any outstanding surplus note or other loan arrangement made pursuant to this
29 subsection shall be deposited in the treasury of the state to the credit of the Health Care Authority.

NOTE: The purpose of this bill is to authorize the board of directors of the West Virginia Health Information Network and the West Virginia Health Care Authority to determine and, with the approval of the Joint Committee on Government and Finance, to implement the most efficient and cost effective method for providing an interoperable health information network, which may include transferring the assets and liabilities of the current health information network to a private nonprofit corporation.

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