

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 549

BY SENATOR MAYNARD

[Introduced January 20, 2020; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, and §16-3D-6, all
 3 relating to informed consent for vaccinations; providing a short title; defining terms;
 4 prohibiting discrimination against patients for declining or delaying vaccines; establishing
 5 prohibited activities; creating rights for patients; and establishing monetary penalties and
 6 revocation of licensure for violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3D. INFORMED CONSENT FOR VACCINATIONS.

§16-3D-1. Short title.

1 This act shall be known and may be cited as the Informed Consent Protection Act.

§16-3D-2. Definitions.

1 The following words and phrases when used in this act shall have the meanings given to
 2 them in this section unless the context clearly indicates otherwise:

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

4 “Emergency medical services provider” means that term as defined in §16-4C-3 of this
 5 code;

6 “Health care facility” means this term as defined in §16-2D-2 of this code;

7 “Health care practitioner” means that term as defined in §16-1A-3 of this code;

8 “Informed consent” means the right of all people to be fully informed about the risks and
 9 benefits of a medical intervention and free to make a voluntary decision on that intervention
 10 without being coerced, threatened, or punished for the decision; and

11 “License” means a health care practitioner license issued by the Department of Health
 12 and Human Resources or a health care facility license issued by the Department of Health and
 13 Human Resources.

§16-3D-3. Vaccination nondiscrimination.

1 (a) Prohibition against discrimination.-- A health care practitioner or a health care facility

2 may not discriminate against a patient or parent or guardian of a patient based solely upon a
3 patient or parent or guardian of a patient choosing to delay or decline a vaccination. Exercising
4 the right to informed consent by delaying or declining vaccinations under this article may not be
5 the reason for a patient or family member of a patient to be dismissed from a practice or lose
6 medical privileges or benefits.

7 (b) Prohibition against harassment.-- A health care practitioner or health care facility may
8 not harass, coerce, scold or threaten a patient or parent or guardian of a patient for exercising the
9 right to delay or decline a vaccination under this article. This provision does not prohibit the health
10 care practitioner or health care facility from providing vaccine related information to the patient or
11 parent or guardian of a patient.

12 (c) Health insurer.--An insurer issuing any type of insurance policy may not deny
13 coverage, increase a premium or otherwise discriminate against an insured or applicant for
14 insurance based on the individual's choice to delay or decline a vaccination for the individual or
15 the individual's child.

§16-3D-4. Prohibited activities.

1 (a) Limitation on payments.-- A health care practitioner or health care facility may not
2 accept a monetary payment in the form of a bonus or other incentive from an insurance company
3 or pharmaceutical company for patient vaccination.

4 (b) Requiring a waiver prohibited.-- A health care practitioner or health care facility may
5 not require a patient or parent or guardian of a patient to sign a liability waiver as a condition to
6 receive medical care in the event the patient or parent or guardian of a patient chooses to delay
7 or decline a vaccination.

8 (c) Investigations by child protective services.-- Child protective services may not initiate
9 an investigation against a parent or guardian for the sole reason of a parent or guardian choosing
10 to delay or decline a vaccination for a child of the parent or guardian under this article.

11 (d) Health care providers.-- An insurer may not deny a health care practitioner's

12 participation in an insurance plan or decrease the practitioner's reimbursements through fines or
13 financial penalties due to low patient vaccination rates or due to a practitioner's decision not to
14 vaccinate a patient.

§16-3D-5. Penalty.

1 For violations under §16-3D-3 and §16-3D-4 of this code, the appropriate board or the
2 department may:

3 (1) For a first violation, levy a fine in the amount of \$1,000; or

4 (2) For a second or subsequent violation, refuse, revoke or suspend the license of a health
5 care practitioner or health care facility.

§16-3D-6. Rights of patients.

1 (a) Summary of rights.--The department shall publish on the department's publicly
2 accessible Internet website a summary of the rights of a patient or parents or guardians of a
3 patient under §16-3D-3 of this code, in any format the health care provider or health care facility
4 chooses.

5 (b) Complaints.-- A health care provider and health care facility, if requested, shall inform
6 patients of the address and telephone number of each State agency responsible for responding
7 to patient complaints about a health care provider or health care facility's alleged noncompliance
8 with this article.

9 (c) Procedure for providing information on patient rights.--A health care provider or facility
10 shall adopt policies and procedures to ensure that a patient and the parent or guardian of a patient
11 are provided the opportunity during the course of admission to receive information regarding the
12 rights contained in §16-3D-3 of this code and how to file complaints with the facility and
13 appropriate state agency.

14 (d) Fines.--The following shall apply:

15 (1) The department may levy the following fines for a violation under this article:

16 (i) Not more than \$5,000 for an unintentional violation.

17 (ii) Not more than \$25,000 for an intentional violation, with each intentional violation
18 constituting a separate violation subject to a separate fine.

19 (2) The appropriate regulatory board or, if no board exists, the department may impose
20 an administrative fine against a health care practitioner for failing to make available to patients a
21 summary of their rights under §16-3D-3 of this code and the following shall apply:

22 (i) A health care provider's first violation under this paragraph shall be subject to corrective
23 action and shall not be subject to an administrative fine if the violation was unintentional.

24 (ii) The appropriate licensing board or the department may levy a fine of not more than
25 \$100 for a second or subsequent unintentional violation under this paragraph.

26 (iii) The appropriate licensing board or the department may levy a fine of not more than
27 \$500 for an intentional violation under this paragraph, with each intentional violation constituting
28 a separate violation subject to a separate fine.

29 (e) Determination of fine.-- In determining the amount of fine to be levied under subsection
30 (d) of this section , the following factors shall be considered:

31 (1) The scope and severity of the violation, including the number of patients or parents or
32 guardians of patients found not to have received notice of a patient's rights under section 3 of this
33 article, and whether the failure to provide the information to patients was willful.

34 (2) Actions taken by the health care provider or health care facility to correct violations or
35 to remedy complaints.

36 (3) Any previous violations under this article by a health care provider or health care
37 facility.

NOTE: The purpose of this bill is to enact an informed consent for vaccinations law.

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