WEST virginia legislature

**FISCAL NOTE**

2023 regular session

Introduced

Senate Bill 255

By Senators Maynard and Karnes

[Introduced January 17, 2023; referred
to the Committee on Health and Human Resources; and then to the Committee on Finance]

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

Be it enacted by the Legislature of West Virginia:

article 3E. informed consent for vaccinations.

§16-3E-1. Short title.

This article shall be known and may be cited as the Informed Consent for Vaccinations Protection Act.

§16-3E-2. Definitions.

As used in this article:

"Department" means the Department of Health and Human Resources;

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

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

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

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

"License" means a health care practitioner license issued by the Department of Health and Human Resources or a health care facility license issued by the Department of Health and Human Resources.

§16-3E-3. Vaccination nondiscrimination.

(a) *Prohibition against discrimination*. -- A health care practitioner or a health care facility may not discriminate against a patient or parent or guardian of a patient based solely upon a patient or parent or guardian of a patient choosing to delay or decline a vaccination. Exercising the right to informed consent by delaying or declining vaccinations under this article may not be the reason for a patient or family member of a patient to be dismissed from a practice or lose medical privileges or benefits.

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

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

§16-3E-4. Prohibited activities.

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

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

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

(d) *Health care providers*. -- An insurer may not deny a health care practitioner’s participation in an insurance plan or decrease the practitioner’s reimbursements through fines or financial penalties due to low patient vaccination rates or due to a practitioner’s decision not to vaccinate a patient.

§16-3E-5. Penalty.

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

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

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

§16-3E-6. Rights of patients.

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

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

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

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

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

(i) Not more than $5,000 for an unintentional violation; and

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

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

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

(ii) The appropriate licensing board or the department may levy a fine of not more than $100 for a second or subsequent unintentional violation under this subsection; and

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

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

(1) The scope and severity of the violation, including the number of patients or parents or guardians of patients found not to have received notice of a patient’s rights under §16-3E-3 of this code, and whether the failure to provide the information to patients was willful;

(2) Actions taken by the health care provider or health care facility to correct violations or to remedy complaints; and

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