

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4595**

By Delegates Tully, Summers, Hite, Rohrbach,  
Fehrenbacher, Ellington, Householder and Espinosa

[Originating in the Committee on the Judiciary;

January 17, 2024]



1 A BILL to amend and reenact §16-29E-2, §16-29E-3, §16-29E-5 §16-29E-6 and §16-29E-7 of the  
2 Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four  
3 new sections designated, §16-29E-8, §16-29E-9, §16-29E-10 and §16-29E-11, all relating  
4 to the Legislative Oversight Commission on Health and Human Resources Accountability;  
5 providing legislative intent; providing legislative finding; providing a purpose; defining  
6 terms; updating the powers of the commission; providing another option for subpoena  
7 compliance; permitting the commission to enter into executive sessions; exempting certain  
8 information from the Freedom of Information Act; requiring the development of  
9 performance measures; requiring the department to report; and updating information the  
10 commission is required to report.

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

**ARTICLE 29E. LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN  
RESOURCES ACCOUNTABILITY.**

**§16-29E-2. Legislative intent.**

1 (a) It is the intent of the Legislature that all actions taken pursuant to the provisions of this  
2 article by the Legislature and the various agencies within the ~~Department of Health and Human~~  
3 ~~Resources departments~~ serve the following core set of principles:

4 (1) That all health and social programs offered under state authority be coordinated to  
5 maximize efficiencies and minimize competition within the various agencies thereby addressing  
6 ~~the needs of the citizens more effectively~~ the needs of citizens and be coordinated to maximize  
7 efficiencies. The goal of the departments is to assist individuals and families to become self-  
8 sufficient;

9 (2) That communication be facilitated among the various agencies within the ~~Department~~  
10 ~~of Health and Human Resources departments~~ and between the ~~department~~ departments and the  
11 Legislature;

12 (3) That policy changes, not made by legislative rule, be discussed with the commission for  
13 purposes of coordinating those policies with existing programs and stated goals;

14 (4) That programs or policies implemented in accordance with federal mandates be  
15 communicated to the commission;

16 (5) That in developing and implementing programs with private or federal grant moneys,  
17 the various agencies communicate their efforts to the commission to ensure and facilitate future  
18 state funding; and

19 (6) That agencies previously exempted from rule-making review by federal or state  
20 statutes advise the commission of program changes which may affect the health and well-being of  
21 the citizens of West Virginia.

22 (b) The Legislature finds that:

23 (1) Waste and inefficiency in state programs undermine the confidence of the people in  
24 government and reduces the ability to adequately address vital public needs;

25 (2) State managers are disadvantaged in their efforts to improve program efficiency and  
26 effectiveness, because of insufficient articulation of program goals and inadequate information on  
27 program performance;

28 (3) A check and balance mechanism is needed for departments' services;

29 (4) State policymaking, spending decisions, and program oversight are seriously hindered  
30 by insufficient attention to program outcome measures.

31 (c) The purposes of this article are to:

32 (1) Improve the confidence of the people in the capability of the departments by  
33 systematically holding it accountable for developing program goals and achieving program results  
34 by measuring program performance against those goals, and reporting publicly on their progress;

35 (2) Improve state program effectiveness and public accountability by promoting a new  
36 focus on results, service quality, and customer satisfaction;

37 (3) Help state managers improve service delivery, by requiring that they plan for meeting  
38 program objectives and by providing them with information about program results and service  
39 quality;

40 (4) Improve state decision making by providing more objective information on achieving  
41 statutory objectives, and on the relative effectiveness and efficiency of state programs and  
42 spending; and

43 (5) Improve internal management of state government.

**§16-29E-3. Definitions.**

1 As used in this article:

2 (a) "Agency" means those various agencies, authorities, boards, committees, and  
3 ~~commissions or departments of the Department of Health and Human Resources~~ with authority to  
4 ~~promulgate legislative rules pursuant to this chapter that~~ regulate health care providers,  
5 practitioners, or consumers; or those offering social services programs within the departments;

6 (b) "Commission" means the Legislative Oversight Commission on Health and Human  
7 Resources Accountability; ~~and~~

8 (c) ~~"Department" means the Department of Health and Human Resources, and any~~  
9 ~~successor agencies.~~

10 "Departments" means the Department of Health, the Department of Human Services, the  
11 Department of Health Facilities, the Office of the Inspector General and all of their bureaus, offices,  
12 and programs;

13 "Outcome measures" means an assessment of the results of a program activity compared  
14 to its intended goal and purpose and this goal shall be compared to a state and national rate;

15 "Output measure" means the tabulation, calculation, or recording of activity or effort and  
16 can be expressed in a quantitative or qualitative manner;

17 "Performance goal" means a target level of performance expressed as a tangible,  
18 measurable objective, against which achievement shall be compared, including a goal expressed  
19 as a quantitative standard, value or rate;

20 "Performance indicator" means a particular value or characteristic used to measure output  
21 or outcome;

22 "Program activity" means a specific activity related to the mission of the departments; and

23 "Program evaluation" means an assessment, through objective and systemic analysis, of  
24 the manner to which the departments achieved intended objectives.

**§16-29E-5. Powers and duties of commission.**

1 ~~(a) The powers, duties, and responsibilities of The commission shall: include the following:~~

2 (1) Make a continuing investigation, study and review of the practices, policies and  
3 procedures of the health care and social services agencies in this state;

4 (2) Make a continuing investigation, study and review of all matters related to health and  
5 social policy in the state;

6 (3) Review program development by the various agencies; ~~of the department of Health and~~  
7 ~~Human Resources;~~

8 (4) Conduct studies on health and human services;

9 ~~(5) Review and study the state Medicaid program in order to determine if the state~~  
10 ~~Medicaid agency, as the payor of last resort, is expending maximum effort to identify alternate~~  
11 ~~private insurance resources for Medicaid beneficiaries;~~

12 ~~(6) Review and study the feasibility and financial impact upon the state by ensuring~~  
13 ~~increased access for Medicaid beneficiaries to primary health care in the nonhospital setting by~~  
14 ~~requiring enrollment in a primary care clinic program, if available;~~

15 ~~(7) Review and study the feasibility and financial impact upon the state of the~~  
16 ~~establishment of different and lesser schedules of payment for primary health services delivered~~

17 ~~by a hospital emergency room as compared to the schedule of payments for emergency room~~  
18 ~~services of a true medical emergency nature;~~

19 ~~(8) (5) Make an~~ evaluation of the adequacy and availability of care delivery networks  
20 throughout the health care continuum from primary care to postmortem settings; and

21 ~~(9) (6) Make a continuing investigation, study, and review of all matters related to any area~~  
22 ~~of concern that exists within the department of Health and Human Resources, and any successor~~  
23 ~~agencies, departments~~ including, but not limited to, financial, administrative, programmatic, and  
24 systemic issues.

25 ~~(b) The commission shall make an annual reports to the Legislature regarding the results~~  
26 ~~of all investigations, studies and reviews. pursuant to §16-29E-7 of this code.~~

**§16-29E-6. Examination and subpoena powers; contempt proceedings.**

1 (a) For purposes of carrying out its duties, the commission ~~is hereby empowered and~~  
2 ~~authorized to~~ may examine witnesses and to subpoena such persons, and books, records,  
3 documents, papers or any other tangible things as it believes should be examined to make a  
4 complete investigation.

5 (b) All witnesses appearing before the commission ~~under subpoena~~ shall testify under oath  
6 or affirmation. Any member of the commission may administer oaths or affirmations. ~~to such~~  
7 ~~witnesses.~~

8 (c) To compel the attendance of witnesses at such hearings or the production of any books,  
9 records, documents, papers or any other tangible thing, the commission ~~is hereby empowered and~~  
10 ~~authorized to~~ may issue subpoenas, signed by one of the cochairpersons, in accordance with §4-  
11 1-5 of this code. ~~Such~~ The subpoenas shall be served by any person authorized by law to serve  
12 and execute legal process and service shall be made without charge. Witnesses subpoenaed to  
13 attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before  
14 any petit jury in this state.

15 (d) If any person subpoenaed to appear at any hearing ~~shall refuse~~ refuses to appear or to  
16 answer inquiries there propounded, or ~~shall fail or refuse~~ fails or refuses to produce books,  
17 records, documents, papers or any other tangible thing within his or her control when ~~the same~~  
18 these are demanded, the commission shall report the facts to the circuit court of Kanawha County  
19 or any other court of competent jurisdiction and ~~such~~ the court may compel obedience to the  
20 subpoena as though ~~such~~ the subpoena had been issued by ~~such~~ the court in the first instance:  
21 Provided, That prior to seeking circuit court relief, the commission may, first demand the head of  
22 the public agency in which an employee has failed to appear or which has failed to produce  
23 requested or subpoenaed material to appear before the commission and address the basis for the  
24 failure to comply and whether compliance will be forthcoming.

**§16-29E-7. Executive sessions.**

1 (a) ~~The commission shall submit annual reports to the Legislature, as required by §16-~~  
2 ~~29E-5 of this code, which such reports shall describe and evaluate in a concise manner:~~

3 ~~(1) The major activities of the several health and human resources agencies for the fiscal~~  
4 ~~year immediately past, including important policy decisions reached on initiatives undertaken~~  
5 ~~during that year, especially as such activities, decisions and initiatives relate to:~~

- 6 ~~(A) The implementation of health care or social services programs;~~
- 7 ~~(B) Improving the accessibility of appropriate health care in all areas of this state;~~
- 8 ~~(C) Improving the health status of the citizens of this state; and~~
- 9 ~~(D) Coordinating social services programs to reflect a cohesive delivery of transitional~~  
10 ~~services.~~

11 ~~(2) Other information considered by the commission to be important, including~~  
12 ~~recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.~~

13 ~~(b) The reports may specify in what manner any practice, policy or procedure may or~~  
14 ~~should be modified to satisfy the goal of efficient and effective delivery of health and social~~  
15 ~~services programs and to improve the quality of health and social services available in this state.~~



16 ~~(c) The commission may require the Department of Health and Human Resources to~~  
17 ~~submit reports on a routine or as needed basis. These reports shall be submitted to the~~  
18 ~~commission. The submission instructions and format for the reports may be designated by the~~  
19 ~~commission or the Joint Committee on Government and Finance.~~

20 The commission may conduct proceedings in a confidential executive session for the  
21 purpose of preparing, deliberating upon and approving or rejecting a referral for investigation of a  
22 matter related to the jurisdiction of the commission to the Commission Special Investigations  
23 provided for under §4-5-1 et seq. Members of the staff of the commission may attend executive  
24 sessions. Executive sessions are limited to investigations of child abuse, nursing home abuse,  
25 IDD waiver, adult protective service matter, child protective services and hospital abuse.

**§16-29E-8. Investigations exempt from public disclosure requirements.**

1 Any referrals pursuant to §16-29E-7 are to be confidential and shall be exempt from public  
2 disclosure under §29B-1-4 of this code.

**§16-29E-9. Performance plans.**

1 The departments shall prepare an annual performance plan covering each program  
2 activity set forth in the departments' budget, which shall be included in an annual performance  
3 report. The plan shall:

4 (1) Establish performance goals to define the level of performance to be achieved by a  
5 program activity;

6 (2) Express such goals in an objective, quantifiable, and measurable form;

7 (3) Briefly describe the operational processes, skills and technology, and the human,  
8 capital, information or other resources required to meet the performance goals;

9 (4) Establish performance indicators to be used in measuring or assessing the relevant  
10 outputs, service levels, and outcomes of each program activity;

11 (5) Provide a basis for comparing actual program results with the established performance  
12 goals; and

13 (6) Describe the means to be used to verify and validate measured value.

**§16-29E-10. Program performance reports.**

1 (a) The departments shall report their progress toward adoption of performance measures  
2 and plan for compiling baseline data for fiscal year 2024 to the commission on July 1, 2024.

3 (b) The departments shall submit an annual program performance report to the  
4 commission beginning on July 1, 2025.

5 (c) The program performance report shall set forth the performance indicators established  
6 in the departments' plan, along with the actual program performance achieved compared with the  
7 performance goals expressed in the plan for that fiscal year.

8 (d) The report for fiscal year 2025 shall include actual results for the preceding fiscal year,  
9 the report for fiscal year 2026 shall include actual results for the two preceding fiscal years and the  
10 report for fiscal year 2027 and all subsequent reports shall include actual results for three  
11 preceding fiscal years.

12 (e) A report shall:

13 (1) Review the success of achieving performance goals of the fiscal year;

14 (2) Evaluate the performance plan for the current fiscal year relative to the performance  
15 achieved towards the performance goals in the fiscal year covered by the report;

16 (3) Explain and describe, where a performance goal has not been met including when a  
17 program activity's performance is determined not to have met criteria of a successful program  
18 state:

19 (A) Why the goal was not met;

20 (B) Those plans and schedules for achieving the established performance goal;

21 (C) If the performance goal is impractical or infeasible, why that is the case; and

22 (D) What action is recommended.

23 (4) The report shall include the summary findings of those program evaluations completed  
24 during the fiscal year covered by the report.

25 (5) The report, strategic plan, performance plans, and program performance reports  
26 required under this article shall be performed only by employees of the departments.

**§16-29E-11. Legislative report.**

1 (a) The commission shall submit an annual report to the Legislature, which shall describe  
2 and evaluate in a concise manner:

3 (1) The major activities for the year immediately past, including important policy decisions  
4 reached on initiatives undertaken during that year;

5 (2) Other information considered by the commission to be important, including  
6 recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.

7 (b) The report may specify in what manner any practice, policy or procedure may or should  
8 be modified to satisfy the goal of efficient and effective delivery of health and social services  
9 programs and to improve the quality of health and social services available in this state.

10 (c) The departments shall report to the commission within 30 days an incident:

11 (1) where an individual in the direct care of the state;

12 (2) where an individual is in the custody of the state; or

13 (3) where the state had a referral concerning that individual within the past 6 months, who  
14 experiences serious harm or death.

15 An incident shall have a documented case number.

16 (d) The commission may require the departments to submit reports on a routine or as  
17 needed basis. These reports shall be submitted to the commission. The submission instructions  
18 and format for the reports may be designated by the commission or the Joint Committee on  
19 Government and Finance

NOTE: The purpose of this bill is to update the authority of LOCHHRA.

This bill was recommended for passage during the 2024 legislative session by the Legislative Oversight Commission of Health and Human Resources Accountability.

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