

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5274

By Delegates Vance, Crouse, Martin, Adkins, Dean,
Worrell, Brooks, Kimble, Warner, Kirby, and Toney

[Introduced January 29, 2024; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-3E-1, §16-3E-2, §16-3E-3, and §16-3E-4, all relating to requiring
 3 information to be provided orally to all patients in order for the patient to give informed
 4 consent knowing all potential outcomes for all medical tests, prescriptions, and treatments;
 5 providing a short title; defining terms; creating rights for patients; and establishing
 6 monetary penalties and revocation of licensure for violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. INFORMED CONSENT FOR ALL MEDICAL TREATMENTS.

§16-3E-1. Short title.

1 This article shall be known and may be cited as the Medical Informed Consent Act.

§16-3E-2. Definitions.

1 As used in this article:

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

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

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

6 "Health care provider" means that term as defined in §16-1A-3 of this code, as well as
 7 dentists, chiropractors, and podiatrists;

8 "Informed consent" means the right of all people to be fully informed about the risks and
 9 benefits of any medical intervention, to be provided with information about all possible treatment
 10 options and medications and the side effects, and free to make a voluntary decision on that
 11 intervention; and

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

§16-3E-3. Informed consent requirements.

1 All medical treatment providers in this state are required to orally describe all possible
2 treatment plans, including potential problems, complications, or side effects to each patient
3 seeking medical advice, treatment, or testing. Upon being advised of all options and possible
4 problems, complications, or side effects, the medical practitioner will obtain the patient's signature
5 to attest that the patient has received this information.

§16-3E-4. Rights of patients; penalties.

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 §16-3E-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 to
7 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 §16-3E-3 of this code and how to file complaints with the facility and
13 appropriate state agency.

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

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

19 (2) The appropriate licensing board or the department may levy a fine of not more than
20 \$100 for a second or subsequent unintentional violation under this subsection; and

21 (3) The appropriate licensing board or the department may levy a fine of not more than
22 \$500 for an intentional violation under this subsection, with each intentional violation constituting a
23 separate violation subject to a separate fine.

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

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

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

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

NOTE: The purpose of this bill is to require information to be provided orally to all patients in order for the patient to give informed consent knowing all potential outcomes for all medical tests, prescriptions, and treatments; providing a short title; defining terms; creating rights for patients; and establishing monetary penalties.

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