



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

April 24, 2015

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The Honorable James L. Pitrolo, Jr.
Chairman
West Virginia HealthCare Authority
100 Dee Drive
Charleston, WV 25311

Dear Chairman Pitrolo:

You have asked for an Opinion of the Attorney General regarding whether the West Virginia Health Information Network (the "WVHIN")—a network "created under the Health Care Authority," W. Va. Code § 16-29G-2(a)—has the power to assess and collect fees. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advice upon questions of law . . . whenever required to do so, in writing, by . . . any other state officer, board or commission." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Attorney General's Office.

In your letter, you explain that the WVHIN is seeking to create a fee structure for participating organizations. As you note, the WVHIN was established by West Virginia Code § 16-29G-1 as a public-private partnership to design, implement, and maintain a statewide health information exchange. You state that when the partnership was created, it was anticipated that a fee structure would be established to maintain the partnership's sustainability. Now, you explain, the WVHIN board is working with participating organizations to create a fair fee structure.

Your letter raises the following legal question:

Does the West Virginia Health Information Network have the authority to assess and collect fees?

The relevant statutory provisions are found at West Virginia Code § 16-29G-1 *et seq.* These provisions establish "the West Virginia Health Information Network under the oversight of the Health Care Authority to promote the design, implementation, operation and maintenance of a fully interoperable statewide network to facilitate public and private use of health care

information in the state.” W. Va. Code § 16-29G-1. Furthermore, the WVHIN is granted certain powers and duties in order to carry out this purpose. Those powers include:

all other incidental powers, including, but not limited to, the following: ... (C) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties.

W. Va. Code § 16-29G-3.

We conclude that the WVHIN may assess and collect fees but may only disburse funds appropriated to it by the Legislature. West Virginia Code § 16-29G-3(C) grants the WVHIN two separate powers. *First*, the WVHIN is authorized to receive and dispense funds appropriated to it by the Legislature. *Second*, the WVHIN may solicit and receive funds from other sources, including individuals and organizations. As compared to the first grant of power, the second grant of power conspicuously fails to authorize the WVHIN to expend any funds. Under the statute’s plain language, the WVHIN may only expend funds specifically appropriated to it by the Legislature.

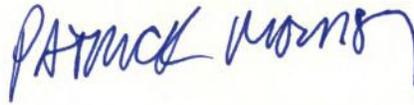
This reading of West Virginia Code § 16-29G-3(C) is confirmed by the separate statutory provision governing the West Virginia Health Information Network Account and expenditures from that account. West Virginia Code § 16-29G-4 provides:

Expenditures from the fund shall be for the purposes set forth in this article and *are not authorized from collections but are to be made only in accordance with appropriation by the Legislature* and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand seven, expenditures are authorized from collections rather than pursuant to appropriations by the Legislature.

W. Va. Code § 16-29G-4 (emphasis added). The highlighted text makes clear that the WVHIN may expend funds from the account only when those funds have been appropriated to it by the Legislature. Moreover, the statute cross-references West Virginia Code § 12-3-14, which declares broadly that it is unlawful for anyone to spend funds on behalf of a state institution in excess of the amount appropriated by the Legislature absent a specific statutory exception.

Honorable James L. Pitrolo, Jr.
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Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick Morrissey". The signature is fluid and cursive, with a prominent loop at the end.

Patrick Morrissey
Attorney General

Elbert Lin
Solicitor General