

Senate Bill No. 120

(By Senator Stollings)

[Introduced January 14, 2015; referred to the Committee on Health and Human Resources; and
then to the Committee on Government Organization.]

**FISCAL
NOTE**

A BILL to repeal §9-2-1a, §9-2-6a, §9-2-9b, §9-2-9c and §9-2-12a of the Code of West Virginia, 1931, as amended; to repeal §9-4C-2, §9-4C-3, §9-4C-4, §9-4C-5, §9-4C-6, §9-4C-7, §9-4C-8, §9-4C-9, §9-4C-10 and §9-4C-11 of said code; to repeal §9-5-8a, §9-5-11a, §9-5-11b, §9-5-11c and §9-5-16a of said code; to repeal §9-6-7, §9-6-8, §9-6-9, §9-6-10, §9-6-11, §9-6-12, §9-6-13 and §9-6-14 of said code; to repeal §9-7-3a, §9-7-5a and §9-7-6a of said code; to amend and reenact §9-1-1 and §9-1-2 of said code; to amend said code by adding thereto two new sections, designated §9-1-3 and §9-1-4; to amend and reenact §9-2-1, §9-2-4, §9-2-5, §9-2-7, §9-2-8, §9-2-9, §9-2-10, §9-2-11 and §9-2-12 of said code; to amend said code by adding thereto three new sections, designated §9-2-13, §9-2-14 and §9-2-15; to amend and reenact §9-3-1, §9-3-2, §9-3-3, §9-3-4 and §9-3-5 of said code; to amend and reenact §9-4-1, §9-4-2, §9-4-3 and §9-4-4 of said code; to amend said code by adding thereto nine new sections, designated §9-4-5, §9-4-6, §9-4-7, §9-4-8, §9-4-9, §9-4-10, §9-4-11,

1 §9-4-12 and §9-4-13; to amend and reenact §9-4A-1, §9-4A-2 and §9-4A-4 of said code; to
2 amend said code by adding thereto two new sections, designated §9-4A-3 and §9-4A-5; to
3 amend and reenact §9-4B-1, §9-4B-2, §9-4B-3, §9-4B-4 and §9-4B-7 of said code; to amend
4 said code by adding thereto three new sections, designated §9-4B-5, §9-4B-6 and §9-4B-8;
5 to amend and reenact §9-4C-1 of said code; to amend and reenact §9-4D-1, §9-4D-2,
6 §9-4D-3, §9-4D-4, §9-4D-5, §9-4D-6, §9-4D-7, §9-4D-8 and §9-4D-9 of said code; to amend
7 said code by adding thereto a new section, designated §9-4D-10; to amend and reenact
8 §9-4E-1, §9-4E-2 and §9-4E-3 of said code; to amend said code by adding thereto nine new
9 sections, designated §9-4E-4, §9-4E-5, §9-4E-6, §9-4E-7, §9-4E-8, §9-4E-9, §9-4E-10,
10 §9-4E-11 and §9-4E-12; to amend and reenact §9-5-1, §9-5-2, §9-5-3, §9-5-4, §9-5-5,
11 §9-5-6, §9-5-7, §9-5-8, §9-5-9, §9-5-10, §9-5-11, §9-5-12, §9-5-13, §9-5-14, §9-5-15,
12 §9-5-16, §9-5-17, §9-5-18, §9-5-19, §9-5-20 and §9-5-21 of said code; to amend said code
13 by adding thereto a new section, designated §9-5-24; to amend and reenact §9-6-1, §9-6-2,
14 §9-6-3, §9-6-4, §9-6-5 and §9-6-6 of said code; to amend and reenact §9-7-1, §9-7-2, §9-7-3,
15 §9-7-4, §9-7-5, §9-7-6, §9-7-7, §9-7-8 and §9-7-9 of said code; and to amend said code by
16 adding thereto seven new sections, designated §9-7-10, §9-7-11, §9-7-12, §9-7-13, §9-7-14,
17 §9-7-15 and §9-7-16, all relating to the Department of Health and Human Resources.

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

19 That §9-2-1a, §9-2-6a, §9-2-9b, §9-2-9c and §9-2-12a of the Code of West Virginia, 1931,
20 as amended, be repealed; that §9-4C-2, §9-4C-3, §9-4C-4, §9-4C-5, §9-4C-6, §9-4C-7, §9-4C-8,
21 §9-4C-9, §9-4C-10 and §9-4C-11 of said code be repealed; that §9-5-8a, §9-5-11a, §9-5-11b,

1 §9-5-11c and §9-5-16a of said code be repealed; that §9-6-7, §9-6-8, §9-6-9, §9-6-10, §9-6-11,
2 §9-6-12, §9-6-13 and §9-6-14 of said code be repealed; that §9-7-3a, §9-7-5a and §9-7-6a of said
3 code be repealed; that §9-1-1 and §9-1-2 of said code be amended and reenacted; that said code be
4 amended by adding thereto two new sections, designated §9-1-3 and §9-1-4; that §9-2-1, §9-2-4,
5 §9-2-5, §9-2-7, §9-2-8, §9-2-9, §9-2-10, §9-2-11 and §9-2-12 of said code be amended and
6 reenacted; that said code be amended by adding thereto three new sections, designated §9-2-13,
7 §9-2-14 and §9-2-15; that §9-3-1, §9-3-2, §9-3-3, §9-3-4 and §9-3-5 of said code be amended and
8 reenacted; that §9-4-1, §9-4-2, §9-4-3 and §9-4-4 of said code be amended and reenacted; that said
9 code be amended by adding thereto nine new sections, designated §9-4-5, §9-4-6, §9-4-7, §9-4-8,
10 §9-4-9, §9-4-10, §9-4-11, §9-4-12 and §9-4-13; that §9-4A-1, §9-4A-2, §9-4A-3 and §9-4A-4 of said
11 code be amended and reenacted; that said code be amended by adding thereto two new sections,
12 designated §9-4A-3 and §9-4A-5; that §9-4B-1, §9-4B-2, §9-4B-3, §9-4B-4 and §9-4B-7 of said
13 code be amended and reenacted; that said code be amended by adding thereto three new sections,
14 designated §9-4B-5, §9-4B-6 and §9-4B-8; that §9-4C-1 of said code be amended and reenacted; that
15 §9-4D-1, §9-4D-2, §9-4D-3, §9-4D-4, §9-4D-5, §9-4D-6, §9-4D-7, §9-4D-8 and §9-4D-9 of said
16 code be amended and reenacted; that said code be amended by adding thereto a new section,
17 designated §9-4D-10; that §9-4E-1, §9-4E-2 and §9-4E-3 of said code be amended and reenacted;
18 that said code be amended by adding thereto nine new sections, designated §9-4E-4, §9-4E-5,
19 §9-4E-6, §9-4E-7, §9-4E-8, §9-4E-9, §9-4E-10, §9-4E-11 and §9-4E-12; that §9-5-1, §9-5-2, §9-5-3,
20 §9-5-4, §9-5-5, §9-5-6, §9-5-7, §9-5-8, §9-5-9, §9-5-10, §9-5-11, §9-5-12, §9-5-13, §9-5-14,
21 §9-5-15, §9-5-16, §9-5-17, §9-5-18, §9-5-19, §9-5-20 and §9-5-21 of said code be amended and

1 reenacted; that said code be amended by adding thereto a new section, designated §9-5-24; that
2 §9-6-1, §9-6-2, §9-6-3, §9-6-4, §9-6-5 and §9-6-6 of said code be amended and reenacted; that
3 §9-7-1, §9-7-2, §9-7-3, §9-7-4, §9-7-5, §9-7-6, §9-7-7, §9-7-8 and §9-7-9 of said code be amended
4 and reenacted; and that said code be amended by adding thereto seven new sections, designated
5 §9-7-10, §9-7-11, §9-7-12, §9-7-13, §9-7-14, §9-7-15 and §9-7-16, all to read as follows:

6 **ARTICLE 1. Department of Health and Human Resources.**

7 **§9-1-1. Continuation of Department of Health and Human Resources.**

8 The Department of Health and Human Resources is continued. The department was first
9 created as the state department of public assistance by chapter one, Acts of the Legislature, first
10 extraordinary session, 1936, and later reconstituted as the state department of welfare by chapter one
11 hundred ten, Acts of the Legislature, regular session, 1961, shall be continued and organized as
12 provided and authorized by this chapter.

13 **§9-1-2. Definitions.**

14 The words and terms when used in this chapter have the following meanings:

15 (1) “Approved accounts” means any retirement account that the secretary has determined is
16 not to be included as an asset in determining the eligibility of an individual for participation in the
17 buy-in program. Approved accounts may include, but not be limited to, private retirement accounts
18 such as individual retirement accounts; other individual accounts; and employer-sponsored
19 retirement plans such as 401(k) plans, Keogh plans and employer pension plans.

20 (2) “Asset disregard” means, with regard to the state’s medical assistance program,
21 disregarding any assets or resources in an amount equal to the insurance benefit payments that are

1 made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance
2 partnership policy.

3 (3) "Assistance" means money payments, medical care, transportation and other goods and
4 services necessary for the health or welfare of individuals, including guidance, counseling and other
5 welfare services and shall include federal-state assistance, federal assistance and state assistance.

6 (4) "At-risk family" means a group of persons living in the same household, living below the
7 federally designated poverty level, lacking the resources to become self-supporting and consisting
8 of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an
9 "at-risk family" may include an unmarried minor parent and his or her dependent child or children
10 who live in an adult-supervised setting;

11 (5) "Autism spectrum disorder" means any pervasive developmental disorder, including
12 autistic disorder, Asperger's Syndrome, Rett syndrome, childhood disintegrative disorder, or
13 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and
14 Statistical Manual of Mental Disorders of the American Psychiatric Association.

15 (6) "Basic coverage group" means an optional coverage group as defined by the Ticket to
16 Work and Work Incentives Improvement Act of 1999.

17 (7) "Benefits" means money payments, goods, services, or any other thing of value.

18 (8) "Beneficiary" or "participant" means any parent, work eligible individuals or
19 caretaker-relative in an at-risk family who receives cash assistance for himself or herself and family
20 members;

21 (9) "Board and Care Facility" means a residential setting where two or more unrelated adults

1 receive nursing services or personal care services.

2 (10) "Bureau" means the Bureau of Medical Services.

3 (11) "Caretaker-relative" means grandparents or other nonparental caretakers not included
4 in the assistance group or receiving cash assistance directly;

5 (12) "Cash assistance" means temporary assistance for needy families;

6 (13) "Challenge" means any fact, circumstance or situation that prevents a person from
7 becoming self-sufficient or from seeking, obtaining or maintaining employment of any kind,
8 including physical or mental disabilities, lack of education, testing, training, counseling, child care
9 arrangements, transportation, medical treatment or substance abuse treatment;

10 (14) "Claim" means an application for payment for goods or services provided under the
11 medical programs of the Department of Health and Human Resources.

12 (15) "Clinical trial" means a study that determines whether new drugs, treatments or medical
13 procedures are safe and effective on humans. To determine the efficacy of experimental drugs,
14 treatments or procedures, a study is conducted in four phases including the following:

15 (A) Phase II: The experimental drug or treatment is given to, or a procedure is performed
16 on, a larger group of people to further measure its effectiveness and safety.

17 (B) Phase III: Further research is conducted to confirm the effectiveness of the drug,
18 treatment or procedure, to monitor the side effects, to compare commonly used treatments and to
19 collect information on safe use.

20 (C) Phase IV: After the drug, treatment or medical procedure is marketed, investigators
21 continue testing to determine the effects on various populations and to determine whether there are

1 side effects associated with long-term use.

2 (16) "Community or personal development" means activities designed or intended to
3 eliminate challenges to participation in self-sufficiency activities. These activities are to provide
4 community benefit and enhance personal responsibility, including, but not limited to, classes or
5 counseling for learning life skills or parenting, dependent care, job readiness, volunteer work,
6 participation in sheltered workshops or substance abuse treatment;

7 (17) "Cooperative group" means a formal network of facilities that collaborate on research
8 projects and have an established NIH-approved peer review program operating within the group.
9 This includes:

10 (A) The national cancer institute clinical cooperative group;

11 (B) The national cancer institute community clinical oncology program;

12 (C) The AIDS clinical trial group; and

13 (D) The community programs for clinical research in AIDS.

14 (18) "Copayment" means a fixed fee to be paid by the patient at the time of each office visit,
15 outpatient service or filling of prescriptions.

16 (19) "Cost-sharing" means the eligible participant will participate in the cost of the program
17 by paying the enrollment fee, monthly premiums and copayments if established by the department.

18 (20) "Countable income" means income that does not exceed two hundred fifty percent of
19 the federal poverty level: *Provided*, That for purposes of this article, countable income does not
20 include:

21 (A) The income of the individual's spouse, parent or guardian with whom he or she resides;

1 and

2 (B) Income disregarded under the state Medicaid plan’s financial methodology, including
3 income disregarded under the federal supplemental security income program (42 U.S.C. §1382) as
4 impairment-related work expenses.

5 (21) “Countable resources” means earned and unearned income: *Provided*, That countable
6 resources do not include:

7 (A) Liquid assets of up to \$5,000 for an individual;

8 (B) Liquid assets of up to \$10,000 for a family;

9 (C) Retirement accounts; and

10 (D) Independence accounts.

11 (22) "Department" means the Department of Health and Human Resources.

12 (23) “Disability” means a medically determinable physical or mental condition that:

13 (A) Can be expected to result in death or has lasted, or can be expected to last, for a
14 continuous period of not less than twelve months; and

15 (B) Renders a person unable to engage in substantial gainful activity; and

16 (C) Is a disability defined by social security administration criteria and has been determined
17 by either the social security administration or the department.

18 (24) "Domiciled in this state" means being physically present in West Virginia accompanied
19 by an intention to remain in West Virginia for an indefinite period of time, and to make West
20 Virginia his or her permanent home.

21 (25) "Education and training" means hours spent regularly attending and preparing for classes

1 in any approved course of schooling or training;

2 (26) “Eligible buy-in participant” means an individual who:

3 (A) Is a resident of the State of West Virginia;

4 (B) Has a disability as defined herein;

5 (C) Is at least sixteen years of age and less than sixty-five years of age;

6 (D) Is engaged in competitive employment, including self-employment or nontraditional
7 work that results in remuneration at or above minimum wage in an integrated setting;

8 (E) Has countable resources that do not exceed the resource limits as defined in this article;

9 and

10 (F) Has countable income that does not exceed the income limits as defined in this article.

11 (27) “Enrollment fee” means a one-time fee to participate in the Medicaid buy-in program.

12 (28) “Entity” means any corporation, association, partnership, limited liability company, or
13 other legal entity.

14 (29) "Estate" means all real and personal property and other assets included within the
15 individual's estate as defined in the state's probate law.

16 (30) “Family assessments” means evaluation of the following: Work skills, prior work
17 experience, employability, education and challenges to becoming self-sufficient such as mental
18 health and physical health issues along with lack of transportation and child care.

19 (31) “FDA” means the federal food and drug administration.

20 (32) “Federal benefit rate” means the amount of monthly federal or state benefits paid to
21 persons with limited income and resources who are age sixty-five or older, blind or disabled.

1 (33) “Federal poverty level” means the level of personal or family income below which one
2 is classified as poor according to federal governmental standards, commonly referred to as the
3 federal poverty guidelines which are issued and printed each year in the federal register.

4 (34) "Federal-state assistance" means and includes:

5 (A) All forms of aid, care, assistance and services to or on behalf of persons, which are
6 authorized by, and who are authorized to receive the same under and by virtue of, subchapters one,
7 four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United States Code;

8 (B) All forms of aid, care, assistance and services to persons, which are authorized by, and
9 who are authorized to receive the same under and by virtue of, any Act of Congress, other than the
10 federal Social Security Act, as amended, for distribution through the department to recipients of any
11 form of aid, care, assistance and services to persons designated or referred to in paragraph (A) and
12 to recipients of state assistance.

13 (35) "Federal assistance" means and includes all forms of aid, care, assistance and services
14 to or on behalf of persons, which are authorized by, and who are authorized to receive the same
15 under any Act of Congress for distribution through the department, the cost of which is paid entirely
16 out of federal appropriations.

17 (36) “Financial Exploitation” means the intentional misappropriation or misuse of funds or
18 assets of another.

19 (37) "General relief" means cash or its equivalent in services or commodities expended for
20 care and assistance to an indigent person other than for care in a county infirmary, child shelter or
21 similar institution.

1 (38) “Income” means money earned from employment wages or self-employment earnings
2 and unearned money received from any other source.

3 (39) “Independence accounts” mean department-approved accounts established with the
4 department solely by funds paid from the earned income of an eligible buy-in participant to cover
5 expenses necessary to enhance or maintain his or her independence or increase employment
6 opportunities. Approved expenditures from the funds may include: Educational expenses;
7 work-related expenses; home purchase or modification; transportation; medical expenses; assistive
8 technology and related services; or for short-term living expenses in times of qualified emergencies
9 as determined by the department.

10 (40) "Indigent person" means any person who is domiciled in this state and who is actually
11 in need as defined by department rules and has not sufficient income or other resources to provide
12 for such need as determined by the department.

13 (41) “Life-threatening condition” means that the member has a terminal condition or illness
14 that according to current diagnosis has a high probability of death within two years, even with
15 treatment with an existing generally accepted treatment protocol.

16 (42) “Liquid assets” means cash or assets payable in cash on demand, including financial
17 instruments that can be converted to cash within twenty working days. National, state and local
18 holidays are not working days.

19 (43) “Long-term care insurance” means a policy described in section four, article fifteen-a,
20 chapter thirty-three of this code.

21 (44) “Long-term care partnership program” means a qualified state long-term care insurance

1 partnership as defined in 42 U.S.C. 1396, Section 1917(b) of the Social Security Act.

2 (45) "Medicaid" means that assistance provided under a state plan implemented pursuant to
3 the provisions of subchapter nineteen, chapter seven, Title 42, United States Code, as that chapter
4 has been and may hereafter be amended.

5 (46) "Medical services" means medical, surgical, dental and nursing services, and other
6 remedial services recognized by law, in the home, office, hospital, clinic and any other suitable place,
7 provided or prescribed by persons permitted or authorized by law to give such services; the services
8 to include drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services,
9 nursing home and convalescent care and such other medical services and supplies as may be
10 prescribed by the persons.

11 (47) "Member" means a policyholder, subscriber, insured, certificate holder or a covered
12 dependent of a policyholder, subscriber, insured or certificate holder.

13 (48) "Minor child head of household" means an emancipated minor under the age of eighteen
14 years;

15 (49) "Multiple project assurance contract" means a contract between an institution and the
16 federal department of health and human services that defines the relationship of the institution to the
17 federal department of health and human services and sets out the responsibilities of the institution
18 and the procedures that will be used by the institution to protect human subjects.

19 (50) "NIH" means the National Institutes of Health.

20 (51) "Nonrecipient parent" means an adult or adults excluded or disqualified by federal or
21 state law from receiving cash assistance;

1 (52) “Patient cost” means the routine costs of a medically necessary health care service that
2 is incurred by a member as a result of the treatment being provided pursuant to the protocols of the
3 clinical trial. Routine costs of a clinical trial include all items or services that are otherwise generally
4 available to beneficiaries of the insurance policies. “Patient cost” does not include:

5 (A) The cost of the investigational drug or device;

6 (B) The cost of nonhealth care services that a patient may be required to receive as a result
7 of the treatment being provided to the member for purposes of the clinical trial;

8 (C) Services customarily provided by the research sponsor free of charge for any participant
9 in the trial;

10 (D) Costs associated with managing the research associated with the clinical trial including,
11 but not limited to, services furnished to satisfy data collection and analysis needs that are not used
12 in the direct clinical management of the participant; or

13 (E) Costs that would not be covered under the participant’s policy, plan, or contract for
14 noninvestigational treatments;

15 (F) Adverse events during treatment are divided into those that reflect the natural history of
16 the disease, or its progression, and those that are unique in the experimental treatment. Costs for the
17 former are the responsibility of the payor as provided in article four, and costs for the later are the
18 responsibility of the sponsor. The sponsor shall hold harmless any payor for any losses and injuries
19 sustained by any member as a result of his or her participation in the clinical trial.

20 (53) “Person” means any individual, corporation, association, partnership, proprietor, agent,
21 assignee or entity.

1 (54) "Personal responsibility contract" means a written agreement entered into by the
2 department and a beneficiary for purposes of participation in the West Virginia Works Program;

3 (55) "Premium" means a monthly fee paid by an eligible buy-in participant to continue
4 participation in the program.

5 (56) "Provider" means any individual or entity furnishing goods or services under the medical
6 programs of the Department of Health and Human Resources.

7 (57) "Reasonable funeral service expenses" means expenses for services provided by a
8 funeral director for the disposition of human remains.

9 (58) "Recipient" means a person who applies for and receives assistance under the Medicaid
10 Program.

11 (59) "Secretary" means the Secretary of the Department of Health and Human Resources.

12 (60) "Services" means nursing facility services, home and community-based services, and
13 related hospital and prescription drug services for which an individual received Medicaid medical
14 assistance.

15 (61) "State assistance" means all forms of aid, care, assistance, services and general relief
16 made possible solely out of state, county and private appropriations to or on behalf of indigent
17 persons.

18 (62) "State Medicaid agency" means the Bureau of Medical Services within the department
19 that is the federally designated single state agency charged with administration and supervision of
20 the state Medicaid program.

21 (63) "Subsidized employment" means employment with earnings provided by an employer

1 who receives a subsidy from the department for the creation and maintenance of the employment
2 position.

3 (64) "Support services" includes, but is not limited to, the following services: Child care;
4 Medicaid; transportation assistance; information and referral; resource development services which
5 includes assisting families to receive child support and supplemental security income; family support
6 services which includes parenting, budgeting and family planning; relocation assistance; and
7 mentoring services.

8 (65) "Temporary assistance to needy families" means the federal program funded under Part
9 A, Title IV of the Social Security Act, codified at 42 U.S.C. §601, *et. seq.*

10 (66) "Third-party" means an individual or entity that is alleged to be liable to pay all or part
11 of the costs of a recipient's medical treatment and medical-related services for personal injury,
12 disease, illness or disability, as well as any entity including, but not limited to, a business
13 organization, health service organization, insurer, or public or private agency acting by or on behalf
14 of the allegedly liable third-party.

15 (67) "Transitional assistance" means medical assistance, food stamp assistance, child care
16 and supportive services as defined by the secretary and as funding permits.

17 (68) "Two-parent family" means two parents with a common child residing in the same
18 household and included in a common West Virginia Works grant payment or, two parents with a
19 common child residing in the same home and one or both of the parents are work eligible
20 individuals, but are excluded from the West Virginia Works payments unless the exclusion is due
21 to an exemption as provided in article five.

1 (69) "Unit" means the Medicaid Fraud Control Unit established under article.

2 (70) "Unsubsidized employment" means employment with earnings provided by an employer
3 who does not receive a subsidy from the department for the creation and maintenance of the
4 employment position.

5 (71) "Vocational educational training" means organized educational programs, not to exceed
6 twelve months for any individual, that are directly related to the preparation of individuals for
7 employment in current or emerging occupations requiring training other than a baccalaureate or
8 advance degree.

9 (72) "Work" means unsubsidized employment, subsidized employment, work experience,
10 community or personal development and education and training.

11 (73) "Work eligible individual" means an adult or minor child head-of-household receiving
12 assistance under the West Virginia Works Program or a nonrecipient parent living with a child
13 receiving the assistance; and

14 (74) "Work experience" means a publicly assisted work activity, including work associated
15 with the refurbishing of publicly assisted housing, performed in return for program benefits that
16 provide general skills, training, knowledge and work habits necessary to obtain employment. This
17 activity must be supervised daily and on an ongoing basis by an employer, work site sponsor or other
18 responsible party.

19 **§9-1-3. Departmental agencies.**

20 The department consists of those agencies as prescribed in section one, article two, chapter
21 five-f.

1 **§9-1-4. Responsibility and powers of department; information and data to be supplied by**
2 **other agencies.**

3 (a) The department is charged with administering the state assistance programs, for which
4 responsibility it shall have:

5 (1) All powers, not inconsistent with state law, as may be necessary for this state to obtain
6 maximum federal funds made available for federal-state assistance within whatever limits or
7 restrictions may be imposed by, or may exist by reason of the amount of state funds appropriated for
8 assistance under, the state's budget act and supplementary appropriation acts; and

9 (2) All powers, not inconsistent with state law, as may be necessary for the disbursement and
10 distribution of assistance to those persons qualified therefor in as prompt, fair, orderly, efficient and
11 economical manner as possible.

12 (b) Notwithstanding any other provision of this code to the contrary, each department,
13 agency, commission or board of state government shall make available to the department such
14 information and data as each department, agency, commission or board may collect about any
15 applicant for or recipient of any type of federal or state assistance upon such terms as may be
16 prescribed by the Governor, if the information and data would be relevant in determining whether
17 the applicant or recipient is qualified or eligible for any assistance, and after the information and data
18 have been obtained by the department, the same shall be used only by the department in carrying out
19 and discharging its powers, duties and responsibilities.

20 **ARTICLE 2. Secretary of Department of Health and Human Resources.**

21 **§9-2-1. Secretary of the department qualifications.**

1 (a) The administrative head of the department is the secretary, who shall be appointed and
2 compensated, as provided by section two-a, article seven, chapter six of this code.

3 (b) Before entering upon the duties of his or her office, the secretary shall take and subscribe
4 to the oath of office prescribed by section five, article four of the State Constitution.

5 (c) The secretary may not be a candidate for, or hold, any other public office or public
6 employment or be a member or officer of any political party committee, or serve as an election
7 official, or engage in any political activity, other than to vote, in an election. Any violation by the
8 secretary of the provisions of this subsection shall automatically vacate his or her appointment as
9 secretary.

10 **§9-2-4. Organization of department.**

11 Consistent with the provisions of section one, article two, chapter five-f of this code, the
12 secretary shall organize the department into offices, divisions, agencies and other administrative
13 units.

14 **§9-2-5. Powers of secretary.**

15 The secretary may:

16 (1) Promulgate, amend, revise and rescind department rules respecting the organization of
17 the department and the execution and administration of those powers, duties and responsibilities
18 granted and assigned by law to the department and the secretary.

19 (2) Promulgate, amend, revise and rescind department rules respecting qualifications for
20 receiving the different classes of assistance consistent with or permitted by federal laws, rules and
21 policies, but not inconsistent with state law: *Provided*, That the rules and policies respecting

1 qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing
2 center licensed under the provisions of article two-e, chapter sixteen of this code by a licensed nurse
3 midwife or midwife as this occupation is defined in section one, article fifteen, chapter thirty of this
4 code and which care is within the scope of duties for a licensed nurse midwife or midwife.

5 (3) Sign and execute in the name of the state by the department any contract or agreement:
6 *Provided*, That the provisions of article three, chapter five-a of this code are followed.

7 (4) Sign and execute a contract to implement professional health care, managed care,
8 actuarial and health care related monitoring, quality review/utilization, claims processing and
9 independent professional consultant contracts for the Medicaid program: *Provided*, That the
10 provisions of article three, chapter five-a are followed: *Provided, however*, That a contract awarded
11 under the agency purchasing process from April 1, 2009, to January 2, 2013, remains in full force
12 and effect and the secretary retains sole authority to review, approve and issue changes to contracts
13 issued under the former purchasing process, and is responsible for challenges, disputes, protests, and
14 legal actions related to the contracts.

15 (5) Establish special funds as may be required by the federal Social Security Act, as amended,
16 or by any other Act of Congress, in order for this state to take full advantage of the benefits and
17 provisions thereof relating to the federal-state assistance and federal assistance programs
18 administered by the department and to make payments into and disbursements out of any such
19 special fund or funds in accordance with the requirements of the federal Social Security Act, as
20 amended, or any other Act or Acts of Congress, and in accordance with applicable state law and the
21 objects and purposes of this chapter.

1 (6) Accept gifts or grants, whether in money, land, services or materials, which gift or gifts,
2 if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of
3 public assistance programs. No part of this special fund may revert to the General Revenue Funds
4 of this state. No expenses incurred pursuant to this special fund are a charge against the General
5 Funds of this state.

6 (7) Establish within the department an Office of Inspector General for the purpose of
7 conducting and supervising investigations and for the purpose of providing quality control for the
8 programs of the department. The Office of Inspector General shall be headed by the Inspector
9 General who shall report directly to the secretary. Neither the secretary nor any employee of the
10 department may prevent, inhibit or prohibit the Inspector General or his or her employees from
11 initiating, carrying out or completing any investigation, quality control review or other activity
12 oversight of public integrity by the Office of the Inspector General. The secretary shall place within
13 the Office of Inspector General any function he or she deems necessary. Qualification, compensation
14 and personnel practice relating to the employees of the Office of the Inspector General, including that
15 of the position of Inspector General, shall be governed by the classified service provisions of article
16 six, chapter twenty-nine of this code and rules promulgated thereunder. The Inspector General shall
17 supervise all personnel of the Office of Inspector General.

18 (8) Provide at department expense a program of continuing professional, technical and
19 specialized instruction for the personnel of the department.

20 (9) Establish a reimbursement program to provide a maximum amount of \$250 per claim to
21 employees of the department whose items of personal property, as defined by legislative rule, are

1 damaged during the course of employment or other work-related activity as a result of aggressive
2 behavior by a client or patient receiving services from the department.

3 (10) Establish and maintain such institutions as are necessary for the temporary care,
4 maintenance and training of children and other persons.

5 (11) Prepare and submit state plans which will meet the requirements of federal laws, rules
6 governing federal-state assistance and federal assistance and which are not inconsistent with state
7 law.

8 (12) Provide by rules such review and appeal procedures within the department as may be
9 required by applicable federal laws and rules respecting state assistance, federal-state assistance and
10 federal assistance and as will provide applicants for, and recipients of all, classes of assistance an
11 opportunity to be heard by the Board of Review, a member thereof, or individuals designated by the
12 board, upon claims involving denial, reduction, closure, delay or other action or inaction pertaining
13 to public assistance.

14 (13) Provide by rules, consistent with requirements of applicable federal laws and rules,
15 application forms and application procedures for the various classes of public assistance.

16 (14) Provide locations for making applications for the various classes of public assistance.

17 (15) Provide a citizen an opportunity to file objections and to be heard upon objections to the
18 grant of any class of public assistance.

19 (16) Delegate to the personnel of the department all powers and duties vested in the secretary,
20 except the power and authority to sign contracts and agreements.

21 (17) Make such reports in such form and containing such information as may be required by

1 applicable federal laws and rules respecting federal-state assistance and federal assistance.

2 (18) Invoke any legal, equitable or special remedies for the enforcement of the provisions of
3 this chapter.

4 **§9-2-7. State's participation in federal work incentive program.**

5 (a) West Virginia acknowledges that the Congress of the United States has enacted legislation
6 amending the Social Security Act to permit states to establish work incentive programs. The
7 secretary may transfer moneys from any appropriate public assistance grant account under his or her
8 control to the special fund, administered by the United States Secretary of Labor. Any moneys
9 transferred by the secretary to the special fund shall be considered as money expended for grants.
10 The secretary may promulgate rules, establish plans and perform any other acts necessary to
11 implement this state's participation in the aforesaid work incentive program.

12 (b) The secretary shall cooperate and coordinate his or her activities with the Commissioner
13 of the Bureau of Employment Programs.

14 **§9-2-8. Information and referral services.**

15 (a) Each local office shall compile, maintain and post a current list of donated food banks and
16 other emergency food providers in the area served by the local SNAP office and refer individuals
17 who need food to local programs that may be able to provide assistance.

18 (b) The department shall use its existing statewide toll free telephone number to provide
19 emergency food information and to refer needy individuals to local programs that may be able to
20 provide assistance. The department shall publish the telephone number for referrals in the
21 emergency telephone numbers section of local telephone books. The department shall display this

1 telephone number in all its offices that issue food stamps.

2 **§9-2-9. Secretary to develop Medicaid monitoring and case management.**

3 (a) The secretary shall:

4 (1) Develop a managed care system to monitor the services provided by the Medicaid
5 program to individual clients;

6 (2) Develop an independent referral service, including the review of individual cases for
7 abuses of the program; and

8 (3) Develop a schedule for implementation of the managed care and independent referral
9 system. The managed care system shall focus on, but not be limited to, the behavioral health and
10 mental health services.

11 (b) In addition thereto, and in accordance with applicable federal Medicaid laws, the secretary
12 shall prepare recommendations, to be submitted to the Joint Committee on Government and Finance.

13 (c) In developing recommendations the secretary shall consider as options the following:

14 (1) Review of Medicaid services which are optional under federal Medicaid law and
15 identification of services to be retained, reduced or eliminated;

16 (2) The elimination, reduction or phase-out of:

17 (A) Services which are not generally available to West Virginia citizens not covered under
18 the state's Medicaid program; or

19 (B) Services which are not generally covered under group policies of insurance made
20 available to employees of employers within the state;

21 (3) The elimination or reduction of services, or reduction of provider reimbursement rates,

1 for identified services of marginal utility;

2 (4) Higher reimbursement rates for primary and preventive care;

3 (5) Changes in fee structure, which may include a system of prospective payments, and may
4 include establishment of global fees for identified services or diagnoses including maternity care;

5 (6) Utilization caps for certain health care procedures;

6 (7) Restriction of coverage for cosmetic procedures;

7 (8) Identification of excessive use of certain health care procedures by individuals and a
8 policy to restrict excessive use;

9 (9) Identification of services which reduce the need for more costly options for necessary care
10 and retention or expansion of those programs;

11 (10) Identification of services for which preauthorization is a requirement for Medicaid
12 reimbursement;

13 (11) Recommendations relating to the development of a demonstration project on long-term
14 care, which demonstration project may be limited to patients with Alzheimer's disease;

15 (12) A policy concerning the department's procedures for compliance, monitoring and
16 inspection; and

17 (13) Such other options as may be developed.

18 (c) The secretary shall utilize in-state health care facilities for inpatient treatment when such
19 facilities are available. Prior authorization, consistent with applicable federal law, shall be required
20 for out-of-state inpatient treatment.

21 (d) The secretary shall report to the Joint Committee on Government and Finance on the

1 development and implementation of Medicaid programs that provide incentives to working persons.
2 The secretary shall consider: Subsidies for low income working persons; individual or small
3 employer buy-ins to the state Medicaid Fund; prospective payment systems for primary care
4 physicians in underserved areas; and a system to improve monitoring of collections, expenditures,
5 service delivery and utilization.

6 (e) The secretary shall report quarterly to the Joint Committee on Government and Finance
7 regarding provider and facility compliance with federal and state Medicaid laws, including, but not
8 limited to, the following: The number of inspections conducted during the previous quarter;
9 description of programs, services and facilities reviewed; findings; and recommendations for
10 corrections.

11 (f) The secretary shall, upon federal certification of the claims management system, ensure
12 that the claims management system processing Medicaid claims provides detailed quarterly financial
13 reports to the Legislative Oversight Commission on Health and Human Resources Accountability.

14 **§9-2-10. Recipients of cash grants.**

15 (a) Within such limitations as may be imposed by applicable federal laws, rules and
16 regulations, the department shall make available for public inspection by the thirtieth day of each
17 month a separate alphabetical list of the names, addresses and amounts of all persons receiving
18 assistance in the form of cash grants during the preceding month. This information shall be
19 delivered to the clerk of each county commission who shall immediately file the same in his or her
20 office with respect to persons receiving the cash grants as residents of that county. The information
21 shall be retained in the files of the clerks of the county commission for a period of two years from

1 the date of receipt. All information other than names, addresses and amounts of cash grants shall
2 be considered as confidential.

3 (b) It is unlawful, for commercial or political purposes of any nature, for any person or
4 persons, body, association, firm, corporation or other agency to solicit, disclose, receive, make use
5 of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any lists of names
6 of, or any information concerning, persons applying for or receiving any assistance, directly or
7 indirectly derived from the records, papers, files, or communications of the department or acquired
8 in the course of performance of official duties. The violation of this provision is a misdemeanor,
9 punishable upon conviction, by a fine of not more than \$1,000 or imprisonment of not more than six
10 months, or both.

11 (c) For the protection of applicants and recipients of assistance, the department shall
12 establish legislative rules governing the custody, use and preservation of the records, papers, files
13 and communications of the department.

14 **§9-2-11. Attorney General and prosecuting attorneys to render legal services to commissioner.**

15 The Attorney General, the Attorney General's assistants, and the prosecuting attorneys of the
16 various counties shall render to the commissioner, without additional compensation, the legal
17 services as the commissioner shall require of them in the discharge of the commissioner's duties.
18 This section does not prohibit the department from developing plans for cooperation with courts,
19 prosecuting attorneys, and other law-enforcement officials in a manner as to permit the state and its
20 citizens to obtain maximum fiscal benefits under federal laws, rules and regulations.

21 **§9-2-12. Visitation by county employees.**

1 Health officers, physicians, and nurses employed by a county shall, at the request of the
2 commissioner, make home visits to indigent persons.

3 **§9-2-13. Authority to examine witnesses, administer oaths and take affidavits.**

4 The commissioner and employees of the department may administer oaths, examine
5 witnesses and take and certify affidavits in any matter or thing pertaining to the business of the
6 department.

7 **§9-2-14. Authority to subpoena witnesses and documents when investigating the provision
8 of medical assistance programs.**

9 The commissioner and every duly appointed hearing examiner may apply, on behalf of any
10 party, to the circuit court of the county in which the hearing is to be held, or the circuit court in which
11 the subpoena or subpoena duces tecum is to be served, or the judge of either such court , for the
12 issuance of a subpoena or subpoena duces tecum to compel the attendance of witnesses or the
13 production of documents, before any hearing or administrative tribunal convened to consider
14 suspension or termination of any person or corporation from providing services under the medical
15 assistance programs administered by the department. The application for a subpoena duces tecum
16 shall state with particularity any papers or documents requested and upon hearing, the applicant or
17 party shall notify the court or judge, as the case may be, of the necessity therefor in such hearing.
18 The court or judge thereof, prior to issuing the requested subpoena or subpoena duces tecum, may
19 make any order which justice requires to protect a party or person from annoyance, embarrassment,
20 oppression or undue burden or expense. The party who applies for the subpoena or subpoena duces
21 tecum shall pay the sheriff's fees required for service of these documents.

1 **§9-2-15. Continuation of present aid; contributions by counties.**

2 (a) Except as otherwise provided in this chapter, aid or assistance rendered under existing
3 law is not discontinued.

4 (b) County commissions may contribute in-kind services or money into a special fund of the
5 department to expand the general assistance programs for citizens of its county. No part of this fund
6 may revert to the general revenue of the state.

7 **ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.**

8 **§9-3-1. Application for and granting of federal-state or federal assistance.**

9 Any person domiciled in this state, who makes, or has made in his or her behalf, an
10 application and who is otherwise qualified to receive shall be granted federal-state assistance or
11 federal assistance in such form and amount, to such extent, and for such period, as authorized by
12 applicable federal and state laws, rules and regulations and as determined by the department in
13 accordance with such laws, rules and regulations and within limits of available funds.

14 **§9-3-2. Application for and granting of state assistance.**

15 Any indigent person domiciled in this state, who makes, or has made in his or her behalf,
16 an application and is qualified to receive the same, shall be granted state assistance in such form and
17 amount, to such extent, and for such period, as authorized by applicable state laws, rules and
18 regulations of the department and as determined by the department in accordance with such laws,
19 rules and regulations and within limits of available funds.

20 **§9-3-3. Making application, investigation and grant.**

21 (a) All persons may make application for any class of assistance. Upon receipt of an

1 application for any class of assistance, the department shall make an investigation as may be
2 necessary and as the exigency of the case will permit to determine the eligibility of the applicant for,
3 and the form, amount, extent, and period of, such assistance.

4 (b) When the department approves an application for any class of assistance, it shall fix the
5 amount, form, extent and period of the assistance in accordance with applicable federal and state
6 laws, rules and regulations and within the limits of available funds.

7 **§9-3-4. Assignment of support obligations.**

8 (a) A recipient of financial assistance under the program of state and federal assistance
9 established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act
10 thereto, shall, as a condition of receiving assistance funded under this part, assign to the department
11 any right the family member may have (on behalf of the family member or of any other person for
12 whom the family member has applied for or is receiving such assistance) to support from any other
13 person, not exceeding the total amount of assistance so paid to the family, which accrues during the
14 period that the family receives assistance under the program.

15 (b) An applicant for assistance subject to the assignment established in this section shall,
16 during the application process, be informed in writing of the nature of the assignment.

17 (c) Any payment of federal and state assistance made to or for the benefit of any child or
18 children or the caretaker of a child or children creates a debt due and owing to the department by the
19 person or persons responsible for the support and maintenance of the child, children or caretaker in
20 an amount equal to the amount of assistance money paid: *Provided*, That the debt is limited by the
21 amount established in any court order or final decree of divorce if the amount in the order or decree

1 is less than the amount of assistance paid.

2 (d) The assignment under this section subrogates the department to the rights of the child,
3 children or caretaker to the prosecution or maintenance of any action or procedure existing under law
4 providing a remedy whereby the department may be reimbursed for moneys expended on behalf of
5 the child, children or caretaker. The department is further subrogated to the debt created by any
6 order or decree awarding support and maintenance to or for the benefit of any child, children or
7 caretaker included within the assignment under this section and is empowered to receive money
8 judgments and endorse any check, draft, note or other negotiable document in payment thereof.

9 (e) The assignment created under this section shall be released upon closure of the assistance
10 case and the termination of assistance payments except for support and maintenance obligations
11 accrued and owing at the time of closure which are necessary to reimburse the department for any
12 balance of assistance payments made.

13 (f) The department may, at the election of the recipient, continue to receive support and
14 maintenance moneys on behalf of the recipient following closure of the assistance case and shall
15 distribute the moneys to the caretaker, child or children.

16 **§9-3-5. Services to persons not otherwise eligible.**

17 (a) The department may make available the services under the provisions of section four of
18 this article, to any person not eligible for receipt of public assistance upon application: *Provided,*
19 That the department may not require such person to use its services. These services may include,
20 but need not be limited to, the following: Location of the responsible parent whose whereabouts are
21 unknown, collection of child support and maintenance moneys owed, and distribution of support and

1 maintenance moneys paid.

2 (b) The department may charge a reasonable fee to nonpublic assistance persons for the
3 provision of services and, when the department has provided services for the collection of support
4 and maintenance, may charge a reasonable fee to the person responsible for the support and
5 maintenance. The commissioner shall establish by rules the amount of such fees, not in excess of
6 maximum amounts permitted by applicable federal law, which rules may be amended and
7 supplemented from time to time.

8 **ARTICLE 4. BUREAU OF MEDICAL SERVICES.**

9 **§9-4-1. Continuation of the Bureau of Medical Services.**

10 The Bureau of Medical Services is continued.

11 **§9-4-2. Medical services fund.**

12 (a) The special fund known as the Medical Services Fund is continued.

13 (b) The fund shall consist of payments made into the fund out of state appropriations for
14 medical services to recipients of specified classes of assistance and such federal grants-in-aid as are
15 made available for specified classes of assistance. Any balance in the fund at the end of any fiscal
16 year shall remain in the fund and shall not expire or revert. Payments shall be made out of the fund
17 upon requisition of the commissioner by means of a warrant signed by the Auditor and Treasurer.

18 (c) Recipients of those classes of assistance as are specified by the department, consistent
19 with applicable federal laws, rules and regulations, shall be entitled to have costs of necessary
20 medical services paid out of the fund, in the manner and amounts, to the extent, and for the period
21 determined from time to time to be feasible by the commissioner pursuant to legislative rules

1 established by him or her. The legislative rules shall comply with requirements of applicable federal
2 laws, rules and regulations and shall be established on the basis of money available for the purpose,
3 the number of recipients, the experience with respect to the incidence of illness, disease, accidents,
4 and other causes among the recipients causing them to require medical services and the costs thereof,
5 the amounts which recipients require otherwise in order to maintain a subsistence compatible with
6 decency and health, and any other factor considered relevant and proper by the commissioner:
7 *Provided*, That the legislative rules respecting qualifications shall permit the expenditure of state
8 funds to pay for care rendered in any birthing center licensed under the provisions of article two-e,
9 chapter sixteen of this code, by a licensed nurse midwife or midwife as this term is defined in article
10 fifteen, chapter thirty of this code.

11 **§9-4-3. Advisory council.**

12 (a) The Medicaid Advisory Council is continued and has those advisory powers and duties
13 as are granted and imposed by this section and elsewhere by law.

14 (b) The advisory council shall consist of not less than nine members, nor more than fifty
15 members, all but four of whom shall be appointed by the Commissioner of the Bureau of Medical
16 Services and serve until replaced or reappointed on a rotating basis.

17 (c)(1) The Commissioner of the Bureau of Public Health and the Commissioner of Bureau
18 for Medical Services are members ex officio.

19 (2) The cochairs of the Legislative Oversight Commission on Health and Human Resources
20 Accountability, or their designees, are nonvoting ex officio members.

21 (3) The remaining members comprising the council consist of:

1 (A) One member of recognized ability in the field of medicine and surgery with respect to
2 whose appointment the state Medical Association shall be afforded the opportunity of making
3 nomination of three qualified persons;

4 (B) One member of recognized ability in the field of dentistry with respect to whose
5 appointment the state Dental Association shall be afforded the opportunity of nominating three
6 qualified persons;

7 (C) One member chosen from a list of three persons nominated by the West Virginia Primary
8 Care Association;

9 (D) One member chosen from a list of three persons nominated by the Behavioral Health
10 Providers Association of West Virginia; and

11 (E) The remaining members chosen from persons of recognized ability in the fields of
12 hospital administration, nursing and allied professions and from consumers groups, including
13 Medicaid recipients, members of the West Virginia Directors of Senior and Community Services,
14 labor unions, cooperatives and consumer- sponsored prepaid group practices plans.

15 (d) The council shall meet on call of the state Medicaid Agency.

16 (e) Each member of the advisory council shall receive reimbursement for reasonable and
17 necessary travel expenses for each day actually served in attendance at meetings of the council in
18 accordance with the state's travel regulations. Requisitions for the expenses shall be accompanied
19 by an itemized statement, which shall be filed with the Auditor and preserved as a public record.

20 (f) The advisory council shall assist the state Medicaid Agency in the establishment of rules,
21 standards and bylaws necessary to carry out the provisions of this section and shall serve as

1 consultants to the state Medicaid Agency in carrying out the provisions of this section.

2 **§9-4-4. Collection of copayments by health care providers; penalties.**

3 (a) The secretary shall institute a program which requires the payment and collection of
4 copayments. The program shall conform with Section 447.53, Chapter 42 of the Code of Federal
5 Regulations, and the amount of the copayments shall be determined in accordance with the
6 provisions of Sections 447.54 and 447.55, Chapter 42 of the Code of Federal Regulations. The
7 secretary shall complete all federal requirements necessary to implement this section, including the
8 submission of any amendment to the state Medicaid plan.

9 (b) Any individual or entity receiving reimbursement from this state under the medical
10 assistance program of the Social Security Act is required to collect the copayments: *Provided*, That
11 in accordance with Section 447.15, Chapter 42 of the Code of Federal Regulations, no individual or
12 entity shall refuse care or services to any Medicaid-eligible individual because that individual is
13 unable to pay the copayment. The amount of copayments collected shall be reported to the secretary.

14 (c) A person, firm, corporation or other entity who willfully, by means of a false statement
15 or representation, or by concealment of any material fact, or by other fraudulent scheme, device or
16 artifice on behalf of himself, itself or others, fails to attempt to collect copayments as required by this
17 section, shall be liable for payment to the department of a civil money penalty in the amount of \$100
18 for each occurrence of willful failure to collect a required copayment.

19 (d) If it comes to the attention of the secretary that a person or other entity is failing to
20 attempt to collect copayments as mandated, the matter shall be referred to the Medicaid Fraud
21 Control Unit for investigation and referral for prosecution pursuant to the provisions of article seven

1 of this chapter.

2 **§9-4-5. Limitation on use of funds.**

3 (a) No funds from the Medicaid program accounts may be used to pay for the performance
4 of an abortion by surgical or chemical means unless:

5 (1) On the basis of the physician's best clinical judgment, there is:

6 (A) A medical emergency that so complicates a pregnancy as to necessitate an immediate
7 abortion to avert the death of the mother or for which a delay will create grave peril of irreversible
8 loss of major bodily function or an equivalent injury to the mother: *Provided*, That an independent
9 physician concurs with the physician's clinical judgment; or

10 (B) Clear clinical medical evidence that the fetus has severe congenital defects or terminal
11 disease or is not expected to be delivered; or

12 (C) The individual is a victim of incest or the individual is a victim of rape when the rape is
13 reported to a law-enforcement agency.

14 (b) The Legislature intends that the state's Medicaid program not provide coverage for
15 abortion on demand and that abortion services be provided only as expressly provided in this section.

16 **§9-4-6. Coverage for patient cost of clinical trials.**

17 (a) This applies to the health plans regulated by this article.

18 (b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the
19 Social Security Act.

20 (c) A policy, plan or contract subject to this section shall provide coverage for patient cost
21 to a member in a clinical trial, as a result of:

- 1 (1) Treatment provided for a life-threatening condition; or
- 2 (2) Prevention of, early detection of or treatment studies on cancer.
- 3 (d) The coverage under subsection (c) of this section is required if:
- 4 (1)(A) The treatment is being provided or the studies are being conducted in a Phase II, Phase
- 5 III or Phase IV clinical trial for cancer and has therapeutic intent; or
- 6 (B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for any
- 7 other life-threatening condition and has therapeutic intent;
- 8 (2) The treatment is being provided in a clinical trial approved by:
- 9 (A) One of the national institutes of health;
- 10 (B) An NIH cooperative group or an NIH center;
- 11 (C) The FDA in the form of an investigational new drug application or investigational device
- 12 exemption;
- 13 (D) The federal Department of Veterans Affairs; or
- 14 (E) An institutional review board of an institution in the state which has a multiple project
- 15 assurance contract approved by the office of protection from research risks of the national institutes
- 16 of health;
- 17 (3) The facility and personnel providing the treatment are capable of doing so by virtue of
- 18 their experience, training and volume of patients treated to maintain expertise;
- 19 (4) There is no clearly superior, noninvestigational treatment alternative;
- 20 (5) The available clinical or preclinical data provide a reasonable expectation that the
- 21 treatment will be more effective than the noninvestigational treatment alternative;

1 (6) The treatment is provided in this state: *Provided*, That if the treatment is provided outside
2 of this state, the treatment must be approved by the payor designated in subsection (a) of this section;

3 (7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles
4 and is otherwise subject to all restrictions and obligations of the health plan; and

5 (8) Reimbursement for treatment by an out of network or noncontracting provider shall be
6 reimbursed at a rate which is no greater than that provided by an in network or contracting provider.
7 Coverage is not required if the out of network or noncontracting provider will not accept this level
8 of reimbursement.

9 (e) Payment for patient costs for a clinical trial is not required by the provisions of this
10 section, if:

11 (1) The purpose of the clinical trial is designed to extend the patent of any existing drug, to
12 gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage
13 relating to additional clinical indications for an existing drug; or

14 (2) The purpose of the clinical trial is designed to keep a generic version of a drug from
15 becoming available on the market; or

16 (3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or
17 repackaged version of an existing drug.

18 (f) Any provider billing a third party payor for services or products provided to a patient in
19 a clinical trial shall provide written notice to the payor that specifically identifies the services as part
20 of a clinical trial.

21 (g) Notwithstanding any provision in this section to the contrary, coverage is not required for

1 Phase I of any clinical trial.

2 **§9-4-7. Medicaid program; maternity and infant care.**

3 (a) The department shall:

4 (1) Extend the Medicaid coverage to pregnant women and their newborn infants to one
5 hundred fifty percent of the federal poverty level.

6 (2) As provided under COBRA, SOBRA, and OBRA, infants shall be included under the
7 Medicaid coverage with all children eligible for Medicaid coverage, whose family incomes are at
8 or below one hundred percent of the federal poverty level and continuing until such children reach
9 the age of eight years.

10 (3) Elect the federal options provided under COBRA, SOBRA, and OBRA, impacting
11 pregnant women and children below the poverty level: *Provided*, That no provision in this article
12 restricts the department in exercising new options provided by or to be in compliance with new
13 federal legislation that further expands eligibility for children and pregnant women.

14 (6) Shall increase to no less than \$600 the reimbursement rates under the Medicaid program
15 for prenatal care, delivery and post-partum care.

16 (c) In order to be in compliance with the provisions of OBRA, through legislative rules, the
17 department shall ensure that pregnant women and children whose incomes are above the Aid to
18 Families and Dependent Children (AFDC) payment level are not required to apply for entitlements
19 under the AFDC program as a condition of eligibility for Medicaid coverage. Further, the
20 department shall develop a short, simplified pregnancy/pediatric application of no more than three
21 pages, paralleling the simplified OBRA standards.

1 (d) Any woman who establishes eligibility under this section shall continue to be treated as
2 an eligible individual without regard to any change in income of the family of which she is a member
3 until the end of the sixty day period beginning on the last day of her pregnancy.

4 **§9-4-8. Medicaid program; preferred drug list and drug utilization review.**

5 (a) The Legislature finds that it is a public necessity that trade secrets, rebate amounts,
6 percentage of rebate, manufacturer's pricing and supplemental rebates that are contained in records,
7 as well as any meetings at which this information is negotiated or discussed need confidentiality to
8 insure the most significant rebates available for the state. Information pertaining to similar
9 agreements with the federal government and negotiated by pharmaceutical manufacturers is
10 confidential pursuant to 42 U.S.C. 1396r-8. A rebate as a percentage of average manufacture price
11 is confidential under federal law and the federal rebate could be made known if not protected by state
12 law. Because of the protection afforded by federal law, if this information is not protected by state
13 law, manufacturers will not be willing to offer a rebate in West Virginia. Further, the Legislature
14 finds that the number and value of supplemental rebates obtained by the department will increase,
15 to the benefit of Medicaid recipients, if information related to the supplemental rebates is protected
16 in the records of the department and in meetings in which this information is disclosed because
17 manufacturers will be assured they will not to be placed at a competitive disadvantage by exposure
18 of this information.

19 (b) The secretary may develop a preferred drug list, in accordance with federal law, which
20 shall consist of federally approved drugs. The department, through administration of the Medicaid
21 program, may reimburse, where applicable and in accordance with federal law, entities providing

1 and dispensing prescription drugs from the preferred drug list.

2 (c) The secretary may negotiate and enter into agreements with pharmaceutical manufacturers
3 for supplemental rebates for Medicaid reimbursable drugs.

4 (d) The provisions of article three, chapter five-a of this code do not apply to any contract or
5 contracts entered into under this section.

6 (e) Trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and
7 supplemental rebates which are contained in the department's records and those of its agents with
8 respect to supplemental rebate negotiations and which are prepared pursuant to a supplemental rebate
9 agreement are confidential and exempt from all of article one, chapter twenty-nine-b of this code.

10 (f) Those portions of any meetings of the committee at which trade secrets, rebate amounts,
11 percentage of rebate, manufacturer's pricing and supplemental rebates are disclosed for discussion
12 or negotiation of a supplemental rebate agreement are exempt from all of article nine-a, chapter six
13 of this code.

14 (g) The secretary shall monitor and evaluate the effects of this provision on Medicaid
15 recipients, the Medicaid program, physicians and pharmacies.

16 (h) The commissioner shall implement a drug utilization review program to assure that
17 prescribing and dispensing of drug products result in the most rational cost-effective medication
18 therapy for Medicaid patients.

19 (i) Any moneys received in supplemental rebates will be deposited in the medical services
20 fund.

21 **§9-4-9. Medicaid-certified nursing homes; screening of applicants and residents for mental**

1 **illness; reimbursement of hospitals.**

2 (a) The department shall cause individuals applying for admission to or residing in a
3 Medicaid-certified nursing home to be screened as required by the Omnibus Budget Reconciliation
4 Act of 1987.

5 (b) Hospitals shall receive administrative day payment at a rate set by the Medicaid agency
6 to reimburse the hospitals for days required for the screening of Medicaid eligible patients required
7 by subsection (a) of this section.

8 (c) The secretary may promulgate rules to implement this section.

9 **§9-4-10. Nonprofit agency or facility, in receipt of Medicaid moneys, shall provide annual**
10 **accounting of gross receipts and disbursements including salaries.**

11 Any nonprofit health care agency or facility which receives Medicaid moneys shall provide
12 an annual accounting of that facility's or provider's receipts and disbursements, including the total
13 salaries of all employees and administrators, with one copy submitted to the Joint Committee on
14 Government and Finance and one copy submitted to the Health Care Authority on or before the
15 January 15 for the preceding year.

16 **§9-4-11. Summary review for certain behavioral health facilities and services.**

17 (a) A certificate of need as provided in article two-d, chapter sixteen of this code is not
18 required by an entity proposing additional behavioral health care services, but only to the extent
19 necessary to gain federal approval of the Medicaid MR/DD waiver program, if a summary review
20 is performed in accordance with the provisions of this section.

21 (b) Prior to initiating any summary review, the secretary shall direct the revision of the state

1 mental health plan as required by the provisions of 42 U.S.C. 300x and section four, article one-a,
2 chapter twenty-seven of this code. In developing those revisions, the secretary is to appoint an
3 advisory committee composed of representatives of the associations representing providers, child
4 care providers, physicians and advocates. The secretary shall appoint the appropriate department
5 employees representing regulatory agencies, reimbursement agencies and oversight agencies of the
6 behavioral health system.

7 (c) If the secretary determines that specific services are needed but unavailable, he or she
8 shall provide notice of the department's intent to develop those services. Notice may be provided
9 through publication in the state register, publication in newspapers or a modified request for proposal
10 as developed by the secretary.

11 (d) The secretary may initiate a summary review of additional behavioral health care services,
12 but only to the extent necessary to gain federal approval of the Medicaid MR/DD waiver program,
13 by recommending exemption from the provisions of article two-d, chapter sixteen of this code to the
14 Health Care Authority. The recommendation is to include the following findings:

15 (1) That the proposed service is consistent with the state health plan and the state mental
16 health plan;

17 (2) That the proposed service is consistent with the department's programmatic and fiscal
18 plan for behavioral health services;

19 (3) That the proposed service contributes to providing services that prevent admission to
20 restrictive environments or enables an individual to remain in a nonrestrictive environment;

21 (4) That the proposed service contributes to reducing the number of individuals admitted to

1 inpatient or residential treatment programs or services;

2 (5) If applicable, that the proposed service will be community-based, locally accessible,
3 provided in an appropriate setting consistent with the unique needs and potential of each client and
4 his or her family and located in an area that is unserved or underserved or does not allow consumers
5 a choice of providers; and

6 (6) That sufficient funds are available for the proposed service without decreasing access to
7 or provision of existing services. The secretary may, from time to time, transfer funds pursuant to
8 the general provisions of the budget bill.

9 (e) The secretary's findings shall be filed with the secretary's recommendation and
10 appropriate documentation. If the secretary's findings are supported by the accompanying
11 documentation, the proposal does not require a certificate of need.

12 (f) Any entity that does not qualify for summary review is subject to a certificate of need
13 review.

14 (g) Any provider of the proposed services denied authorization to provide those services
15 pursuant to the summary review has the right to appeal that decision to the bureau in accordance with
16 the provisions of section ten, article two-d, chapter sixteen of this code.

17 **§9-4-12. Medicaid program; chronic kidney disease; evaluation and classification.**

18 (a) Any enrollee in Medicaid who is eligible for services and who has a diagnosis of diabetes
19 or hypertension or, who has a family history of kidney disease, shall receive coverage for an
20 evaluation for chronic kidney disease through routine clinical laboratory assessments of kidney
21 function.

1 (b) Any enrollee who has received a diagnosis of kidney disease shall be classified as a
2 chronic kidney patient.

3 (c) The diagnostic criteria used to define chronic kidney disease should be those generally
4 recognized through clinical practice guidelines which identify chronic kidney disease or its
5 complications based on the presence of kidney damage and level of kidney function.

6 (d) Medicaid providers shall be educated by the Bureau for Public Health in an effort to
7 increase the rate of evaluation and treatment for chronic kidney disease. Providers should be made
8 aware of:

9 (1) Managing risk factors, which prolong kidney function or delay progression to kidney
10 replacement therapy;

11 (2) Managing risk factors for bone disease and cardiovascular disease associated with chronic
12 kidney disease;

13 (3) Improving nutritional status of chronic kidney disease patients; and

14 (4) Correcting anemia associated with chronic kidney disease.

15 **§9-4-13. Annual report to Joint Committee on Government and Finance regarding treatment**
16 **for autism spectrum disorders provided by the Bureau for Medical Services.**

17 On or before January 1 each year, the bureau shall file an annual report with the Joint
18 Committee on Government and Finance describing the number of enrolled individuals with autism
19 spectrum disorder, including the fiscal and administrative impact of treatment of autism spectrum
20 disorders, and any recommendations the agency may have as to changes in law or policy related to
21 such disorder. In addition, the bureau shall provide such other information as may be requested by

1 the Joint Committee on Government and Finance as it may from time to time request.

2 **ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.**

3 **§9-4A-1. Legislative findings.**

4 The Legislature finds and declares the following:

5 (a) Federal Medicaid laws encourage special recognition of disproportionate share hospitals
6 for Medicaid reimbursement purposes.

7 (b) These same federal laws permit and encourage the state to fund the Medicaid program
8 through flexible means, including public and private contributions to serve as the state share for
9 purposes of federal financial participation.

10 (c) Because of state budget constraints, moneys paid to disproportionate share hospitals under
11 the Medicaid program have not been sufficient to allow the hospitals to recover adequate
12 reimbursement for the costs associated with providing appropriate services to Medicaid clients of
13 this state.

14 (d) The policy of this state is to encourage disproportionate share hospitals to continue
15 providing health care services to the needy citizens of West Virginia; such encouragement and
16 support are increasingly important when combined with federal financial participation.

17 (e) Cost shifting is a serious problem and it is the intent of the Legislature to reduce cost
18 shifting.

19 **§9-4A-2. Creation of Medicaid Uncompensated Care Fund.**

20 (a) There is continued in the State Treasury a special revolving fund known as the Medicaid
21 Uncompensated Care Fund. All moneys deposited or accrued in this fund shall be used exclusively:

1 (1) To provide the state's share of the federal Medicaid program funds in order to improve
2 inpatient payments to disproportionate share hospitals; and

3 (2) To cover administrative cost incurred by the department and associated with the Medicaid
4 program and this fund: *Provided*, That no expenditures may be made to cover said administrative
5 costs except as appropriated by the Legislature.

6 (b) Moneys from the following sources may be placed into the fund:

7 (1) All public funds transferred by any public agency to the Medicaid program for deposit
8 in the fund as contemplated or permitted by applicable federal Medicaid laws;

9 (2) All private funds contributed, donated or bequeathed by corporations, individuals or other
10 entities to the fund as contemplated and permitted by applicable federal Medicaid laws;

11 (3) Interest which accrued on amounts in the fund from sources identified in subdivisions (1)
12 and (2) of this subsection; and

13 (4) Federal financial participation matching the amounts referred to in subdivisions (1), (2)
14 and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

15 (c) Any balance remaining in the Medicaid Uncompensated Care Fund at the end of any state
16 fiscal year shall not revert to the State Treasury but shall remain in this fund and shall be used only
17 in a manner consistent with this article.

18 (d) Moneys received into the fund shall not be counted or credited as part of the legislative
19 general appropriation to the state Medicaid program.

20 (e) The fund shall be administered by the department. Moneys shall be disbursed from the
21 fund on a quarterly basis. The secretary shall implement the provisions of this article prior to the

1 receipt of any transfer, contribution, donation or bequest from any public or private source.

2 (f) All moneys expended from the fund after receipt of federal financial participation shall
3 be allocated to reimbursement of inpatient charges and fees of eligible disproportionate share
4 hospitals. Except for the payment of administrative costs as provided in this section, appropriation
5 from this fund for any other purposes is void.

6 **§9-4A-3. Medical Services Trust Fund.**

7 (a) The Legislature finds that certain dedicated revenues should be preserved in trust for the
8 purpose of stabilizing the state's Medicaid program and providing services for future federally
9 mandated population groups in conjunction with federal reform.

10 (b) There is continued a special account within the department, which shall be an
11 interest-bearing account and may be invested in the manner permitted by section nine, article six,
12 chapter twelve of this code, designated the Medical Services Trust Fund. Funds paid into the
13 account shall be derived from the following sources:

14 (1) Transfers, by intergovernmental transfer, from the hospital services revenue account
15 provided in section fifteen-a, article one, chapter sixteen of this code;

16 (2) All interest or return on investment accruing to the fund;

17 (3) Any gifts, grants, bequests, transfers or donations which may be received from any
18 governmental entity or unit or any person, firm, foundation or corporation; and

19 (4) Any appropriations by the Legislature which may be made for this purpose.

20 (c) Expenditures from the fund are limited to the following:

21 (1) Payment of backlogged billings from providers of Medicaid services when cash-flow

1 problems within the medical services fund do not permit payment of providers within federally
2 required time limits; and

3 (2) Funding for services to future federally mandated population groups in conjunction with
4 federal health care reform: *Provided*, That other Medicaid funds have been exhausted for the
5 federally mandated expansion.

6 (3) Payment of the required state match for Medicaid disproportionate share payments in
7 order to receive federal financial participation in the disproportionate share hospital program.

8 (d) Expenditures from the fund solely for the purposes set forth in subsection (c) of this
9 section shall be authorized in writing by the Governor, who shall determine in his or her discretion
10 whether any expenditure shall be made, based on the best interests of the state as a whole and its
11 citizens, and shall designate the purpose of the expenditure. Upon authorization signed by the
12 Governor, funds may be transferred to the Medical Services Fund: *Provided*, That all expenditures
13 from the Medical Services Trust Fund shall be reported forthwith to the Joint Committee on
14 Government and Finance.

15 **§9-4A-4. Expansion of coverage to children and terminally ill.**

16 (a) The Department of Health and Human Resources shall:

17 (1) Provide a streamlined application form, which shall be no longer than two pages, for all
18 families applying for medical coverage for children under any of the programs set forth in this
19 section; and

20 (2) Provide the option of hospice care to terminally ill West Virginians who otherwise qualify
21 for Medicaid.

1 (3)Accelerate the Medicaid option for coverage of Medicaid to all West Virginia children
2 whose family income is below one hundred percent of the federal poverty guideline.

3 **§9-4A-5. Legislative reports.**

4 (a) The secretary shall make an annual report to the Legislature on the use of the Medicaid
5 Uncompensated Care Fund.

6 (b) The Health Care Authority shall make an annual report to the Legislature on the impact
7 of improved Medicaid inpatient payments resulting from the fund on nongovernmental payor health
8 care costs.

9 **ARTICLE 4B. MEDICAID BUY-IN PROGRAM.**

10 **§9-4B-1. Legislative findings.**

11 (a) The Legislature finds that there are many individuals in this state who have disabilities
12 that qualify them for state or federal assistance and who are nonetheless willing and able to enter the
13 workforce, but do not do so out of fear of losing essential medical care. As a result, the state realizes
14 increased costs in fully supporting these disabled individuals who, in turn, suffer under an additional
15 disability of being deprived of the additional income, dignity and self-sufficiency derived by being
16 engaged in competitive employment.

17 (b) The Legislature finds that establishing a Medicaid buy-in program for certain individuals
18 with disabilities will assist them in becoming independent of public assistance by enabling them to
19 enter the workforce without fear of losing essential medical care.

20 **§9-4B-2. Medicaid buy-in program; funding.**

21 (a) The Medicaid buy-in program for working individuals with disabilities is continued to

1 provide Medicaid benefits to individuals who are disabled and employed, as authorized under
2 Section 201 of the federal Ticket to Work and Work Incentives Improvement Act of 1999 (P.L.
3 106-170, 42 U.S.C. 1396, *et seq.*).

4 (b) Funding for the buy-in program shall be from funds appropriated by the Legislature,
5 premiums paid, enrollment fees and any federal matching funding available to the program.

6 **§9-4B-3. Eligibility guidelines.**

7 (a) To be eligible to participate in the buy-in program an individual shall:

8 (1) Be a resident of the State of West Virginia;

9 (2) Have a disability that is defined and determined by the social security administration or
10 the department;

11 (3) Be at least sixteen years of age but not more than sixty-four years of age;

12 (4) Be engaged in competitive employment, including self-employment or nontraditional
13 work that results in remuneration at or above minimum wage in an integrated setting;

14 (5) Have countable resources that do not exceed the resource limit for the supplemental
15 security income program;

16 (6) Have countable income that does not exceed two hundred fifty percent of the federal
17 poverty level;

18 (7) Have total countable unearned income, using the social security income program
19 methodology, that does not exceed the federal benefit rate plus the general income exclusion; and

20 (8) Except as provided in section five of this article, not have countable resources that exceed
21 the resource limits for the federal supplemental security income program.

1 (b) The secretary shall establish a method of providing notice of the availability of
2 participation in the Medicaid buy-in program. The secretary shall develop all forms and notices
3 necessary to implement the provisions of this article, including forms for application to the program,
4 determination of eligibility and continued participation and notices that advise all eligible buy-in
5 participants of the rights, benefits, obligations and participation requirements of the program,
6 including, but not limited to, notice of fees, premiums, premium adjustments, periodic review, length
7 of time for which benefits may be paid and disqualifying factors.

8 **§9-4B-4. Exceptions to qualifying factors.**

9 (a) An individual who is enrolled in the buy-in program and who no longer meets the
10 eligibility requirements of the basic coverage group due to an improvement in the individual's
11 medical condition may continue to be eligible for Medicaid coverage under the buy-in program if
12 the individual meets the following requirements:

13 (1) The individual continues to have a severe medically determinable impairment as
14 determined by the department and as defined and recognized by federal law;

15 (2) The individual is employed and earning a monthly wage that is not less than the federal
16 minimum hourly wage times forty;

17 (3) The individual does not have income or countable resources in excess of the limits
18 established for the basic coverage group;

19 (4) The individual is at least sixteen years of age and less than sixty-five years of age;

20 (5) The individual pays any premiums or other cost sharing required under this chapter; and

21 (6) The individual meets all other eligibility requirements under this section.

1 (b) An individual who is enrolled in the buy-in program and who is unable to maintain
2 employment for involuntary reasons, including temporary leave due to a health problem or
3 involuntary termination, may continue to be eligible for Medicaid coverage under the buy-in program
4 if the individual meets the following requirements:

5 (1) Within thirty days after the date on which the individual becomes unemployed, the
6 individual, or an authorized representative of the individual, submits a written request to the office
7 that the individual's Medicaid coverage be continued;

8 (2) The individual maintains a connection to the workforce during the individual's continued
9 eligibility period by participating in at least one of the following activities:

10 (A) Enrollment in a state or federal vocational rehabilitation program;

11 (B) Enrollment or registration with the office of workforce development;

12 (C) Participation in a transition from school-to-work program;

13 (D) Participation with an approved provider of employment services;

14 (E) Provision of documentation from the individual's employer that the individual is on
15 temporary involuntary leave;

16 (F) The individual does not have income or countable resources in excess of the limits
17 established under this section;

18 (G) The individual is at least sixteen years of age and less than sixty-five years of age;

19 (H) The individual pays any premiums or other cost sharing required under this section; and

20 (I) The individual meets all other eligibility requirements under this section.

21 (c) The department shall continue Medicaid coverage under the buy-in program for an

1 individual described in subsection (b) of this section for up to six months from the date of the
2 individual's involuntary loss of employment.

3 (d) If an individual is ineligible for continued coverage under the buy-in program because
4 he or she fails to meet the requirements of subsection (b) of this section or has already fulfilled
5 twelve months of continuing eligibility, the individual shall be required to meet the eligibility
6 requirements of another available Medicaid program in order to continue to be eligible for Medicaid
7 benefits.

8 **§9-4B-5. Fees, premiums and periodic reviews.**

9 (a) The department shall charge a \$50 enrollment fee to all participants in the Medicaid
10 buy-in program. Upon payment of the enrollment fee, the first month's premium payment is waived.
11 Medicaid coverage begins on the first day of the month following payment of the enrollment fee.

12 (b) The department shall develop a sliding scale of premiums for individuals participating
13 in the buy-in program. The sliding scale shall:

14 (1) Be based on the annual gross income of the individual; and

15 (2) Provide for a minimum premium of \$15 and a maximum monthly premium not to exceed
16 three and one-half percent of the individual's gross monthly income.

17 (c) Subject to the minimum and maximum amounts described in this section, the department
18 may annually adjust the scale of premiums charged for participation in the Medicaid buy-in program.

19 (d) The department shall biannually review the amount of the premium that an individual is
20 required to pay under this section.

21 (e) The department may increase the premium required only after conducting a review.

1 (f) The department shall decrease the premium that an eligible buy-in participant is required
2 to pay if:

3 (1) The individual notifies the office of a change in income or family size; and

4 (2) The sliding scale adopted by the department applied to the individual's changed
5 circumstances prescribes a premium for the individual that is lower than the premium the individual
6 is paying.

7 (g) The department shall establish administrative procedures regarding premiums for the
8 buy-in program, including:

9 (1) The effect of nonpayment of a premium; and

10 (2) The collection of premiums.

11 (h) The department shall establish criteria to base the biannual redetermination of disability
12 required for an individual participating in the buy-in program on the individual's medical evidence,
13 including evidence of physical or mental impairment.

14 (i) In conducting the biannual redetermination described in this section, the department may
15 not determine that an individual participating in the buy-in program is no longer disabled solely on
16 the individual's:

17 (1) Participation in employment;

18 (2) Earned income; or

19 (3) Income from self-employment.

20 **§9-4B-6. Benefits of the Medicaid buy-in program.**

21 (a) Except as otherwise provided in this article, an eligible buy-in participant shall receive

1 the same benefits that he or she would otherwise receive as a recipient of Medicaid benefits,
2 including home health care services.

3 (b) Except as otherwise provided in this article, an eligible buy-in participant is subject to the
4 same obligations and requirements, including cost sharing, that he or she would otherwise be subject
5 to as recipient of Medicaid benefits.

6 **§9-4B-7. Analytical criteria and reporting requirements.**

7 (a) The secretary shall establish criteria to determine the effectiveness of the Medicaid buy-in
8 program and continued Medicaid coverage through Section 1619 of the federal Social Security Act
9 (42 U.S.C. §1382h). The criteria shall include an analysis of the following:

10 (1) The number of individuals with disabilities who are:

11 (A) Enrolled in the buy-in program; or

12 (B) Receiving Medicaid through Section 1619 of the federal Social Security Act (42 U.S.C.
13 §1382h);

14 (2) The amount of state revenues resulting from premiums paid by participants in the buy-in
15 program; and

16 (3) The amount of state costs incurred as a result of implementing the buy-in program,
17 including administrative costs and costs of providing services.

18 (b) In addition to the criteria required under subsection (b) of this section, the secretary may
19 establish criteria to determine the following:

20 (1) Comparative costs of Medicaid funded services for participants in the buy-in program and
21 work incentives created through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h)

1 before and after employment;

2 (2) The number of supplemental security income and social security disability insurance
3 recipients in West Virginia who are no longer dependent on, or who have reduced dependence on,
4 public assistance or health care entitlement services, other than Medicaid or the Children’s Health
5 Insurance Program, due to participation in the buy-in program or work incentives created through
6 Section 1619 of the federal Social Security Act (42 U.S.C. §1382h);

7 (3) The number of individuals with severe disabilities who are no longer dependent on, or
8 who have reduced dependence on, public benefits or services, other than Medicaid or the Children’s
9 Health Insurance Program, due to income or support services received through participation in the
10 buy-in program or work incentives created through Section 1619 of the federal Social Security Act
11 (42 U.S.C. §1382h); and

12 (4) The change in the number of buy-in program participants or participants in work
13 incentives created through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h) who
14 have health care needs and related services covered through employer based benefit programs.

15 (c) In evaluating the effectiveness of the state’s work incentives initiatives for individuals
16 with disabilities, the secretary:

17 (1) Shall collaborate with other state agencies on data collection; and

18 (2) May consult with an independent contractor to collect data on the criteria required by this
19 section.

20 (d) The department secretary shall provide an annual report of its evaluation of the Medicaid
21 buy-in program performed pursuant to the requirements of this section to the Legislature no later

1 than December 31 of each year.

2 **§9-4B-8. Advisory council; rules.**

3 (a) The secretary shall establish a Medicaid buy-in program advisory council, consisting of
4 representatives from the state Medicaid agency, the state rehabilitation agency, the state office of
5 family support, the West Virginia statewide independent living council, the West Virginia state
6 rehabilitation council, the West Virginia developmental disabilities council, the West Virginia
7 mental health planning council and the center for excellence in disabilities at West Virginia
8 University.

9 (b) The secretary shall submit legislative rules for review and input to the advisory council
10 prior to release for public comment and shall consider any recommendations of the advisory council
11 before adopting final rules.

12 (c) The secretary shall propose legislative rules for legislative approval in accordance with
13 the provisions of article three, chapter twenty-nine-a of this code as may be needed to administer and
14 maintain the Medicaid buy-in program.

15 **ARTICLE 4C. Long-Term Care Partnership Program.**

16 **§9-4C-1. Authority.**

17 (a) The Bureau for Medical Services shall establish a long-term care partnership program in
18 order to provide for the financing of long-term care through a combination of private insurance and
19 Medicaid in accordance with federal requirements on qualified state long-term care insurance
20 partnerships.

21 (b) The bureau shall file a state plan amendment, pursuant to Title XIX of the United States

1 Social Security Act and any amendments thereto, to the United States Department of Health and
2 Human Services to establish that the assets an individual owns and may retain under Medicaid and
3 still qualify for benefits under Medicaid at the time the individual applies for benefits is increased
4 dollar-for-dollar for each dollar paid out under the individuals' long-term care insurance policy if
5 the individual is a beneficiary of a qualified long-term care partnership program policy.

6 (c) An individual who is a beneficiary of a West Virginia long-term care partnership program
7 and meets eligibility requirements is eligible for assistance under the state's medical assistance
8 program using the asset disregard as provided under subsection (b).

9 (d) The bureau shall pursue reciprocal agreements with other states to extend the asset
10 disregard to West Virginia residents who purchased long-term care partnership policies in other
11 states that are compliant with Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005,
12 PL 109-171, and any applicable federal regulations or guidelines.

13 (e) Upon diminishment of assets below the anticipated remaining benefits under a long-term
14 care partnership program policy, certain assets of an individual, as provided under subsection (b),
15 shall not be considered when determining any of the following:

16 (1) Medicaid eligibility;

17 (2) The amount of any Medicaid payment;

18 (3) Any subsequent recovery by the state of a payment for medical services or long-term care
19 services.

20 (f) If the long-term care partnership program is discontinued, an individual who purchased
21 a West Virginia long-term care partnership program policy before the date the program was

1 discontinued shall be eligible to receive asset disregard if allowed as provided by Title VI, Section
2 6021 of the Federal Deficit Reduction Act of 2005, PL 109-171.

3 **ARTICLE 4D. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.**

4 **§9-4D-1. Powers and duties of fraud control unit.**

5 (a) The Medicaid Fraud Control Unit shall be continued and shall have the following powers
6 and duties:

7 (1) The investigation and referral for prosecution of all violations of applicable state and
8 federal laws pertaining to the provision of goods or services under the medical programs of the state
9 including the Medicaid program.

10 (2) The investigation of abuse, neglect or financial exploitation of residents in board and care
11 facilities and patients in health care facilities which receive payments under the medical programs
12 of the state.

13 (3) The cooperation with the federal government in all programs designed to detect and deter
14 fraud and abuse in the medical programs of the state.

15 (4) The employment and training of personnel to achieve the purposes of this article and to
16 employ legal counsel, investigators, Auditors and clerical support personnel and other personnel as
17 are deemed necessary from time to time to accomplish the purposes herein.

18 **§9-4D-2. Investigations; procedure.**

19 (a) When the unit has credible information that indicates a person has engaged in an act or
20 activity which is subject to prosecution under this article, the unit may make an investigation to
21 determine if the act has been committed and, to the extent necessary for that purpose, the secretary,

1 or an employee of the unit designated by the secretary, may administer oaths or affirmations and
2 issue subpoenas for witnesses and documents relevant to the investigation, including information
3 concerning the existence, description, nature, custody, condition and location of any book, record,
4 documents or other tangible thing and the identity and location of persons having knowledge of
5 relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

6 (b) When the unit has probable cause to believe that a person has engaged in an act or activity
7 which is subject to prosecution under this article, or section twenty nine, article two, chapter
8 sixty-one of this code, either before, during, or after an investigation pursuant to this section, the
9 secretary, or an employee of the unit designated by the secretary, may request search warrants and
10 present and swear or affirm criminal complaints.

11 (c) If documents necessary to an investigation of the unit appear to be located outside the
12 state, such documents shall be made available by the person or entity within the jurisdiction of the
13 state having control over such documents either at a convenient location within the state or, upon
14 payment of reasonable and necessary expenses to the unit for transportation and inspection, at the
15 place outside the state where such documents are maintained.

16 (d) Upon failure of a person to comply with a subpoena or subpoena duces tecum or failure
17 of a person to give testimony without lawful excuse and upon reasonable notice to all persons
18 affected thereby, the unit may apply to the circuit court of the county in which compliance is sought
19 for appropriate orders to compel obedience with the provisions of this section.

20 (e) The unit shall not make public the name or identity of a person whose acts or conduct is
21 investigated pursuant to this section or the facts disclosed in the investigation except as the same

1 may be used in any legal action or enforcement proceeding brought pursuant to this article or any
2 other provision of this code.

3 **§9-4D-3. Agency lawyers assisting prosecutors.**

4 Attorneys employed and assigned to the Medicaid Fraud Control Unit created by the
5 provisions of section one of this article may assist in the prosecution of criminal violations of this
6 article.

7 **§9-4D-4. Applications for medical assistance; false statements or representations; criminal
8 penalties.**

9 (a) A person may not knowingly make or cause to be made a false statement or false
10 representation of any material fact in an application for medical assistance under the medical
11 programs of the department.

12 (b) A person may not knowingly make or cause to be made a false statement or false
13 representation of any material fact necessary to determine the rights of any other person to medical
14 assistance under the medical programs of the department.

15 (c) A person may not knowingly and intentionally conceal or fail to disclose any fact with
16 the intent to obtain medical assistance under the medical programs of the Department of Health and
17 Human Resources to which the person or any other person is not entitled.

18 (d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty
19 of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one
20 nor more than ten years, or shall be fined not to exceed \$10,000 or both fined and imprisoned.

21 **§9-4D-5. Bribery; false claims; conspiracy; criminal penalties.**

1 (a) A person may not solicit, offer, pay, or receive any unlawful remuneration, including any
2 kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys
3 from the Medical Services Fund established pursuant to section two, article four of this chapter,
4 which is not authorized by applicable laws or rules and regulations.

5 (b) A person may not make or present or cause to be made or presented to the department a
6 claim under the medical programs of the department knowing the claim to be false, fraudulent or
7 fictitious.

8 (c) A person may not enter into an agreement, combination or conspiracy to obtain or aid
9 another to obtain the payment or allowance of a false, fraudulent or fictitious claim under the
10 medical programs of the department.

11 (d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty
12 of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one
13 nor more than ten years or shall be fined not to exceed \$10,000, or both fined and imprisoned.

14 **§9-4D-6. Venue for criminal offenses.**

15 In addition to other venues permitted by state law, a criminal prosecution under section five
16 of this article may be commenced in the circuit court of Kanawha County or of any county in which:

17 (1) The defendant is conducting business; or

18 (2) Any of the conduct constituting a violation of any provision of this article has occurred.

19 **§9-4D-7. Civil remedies.**

20 (a) Any person, firm, corporation or other entity which willfully, by means of a false
21 statement or representation, or by concealment of any material fact, or by other fraudulent scheme,

1 devise or artifice on behalf of himself, herself, its or others, obtains or attempts to obtain benefits
2 or payments or allowances under the medical programs of the department to which he or she is not
3 entitled, or, in a greater amount than that to which he or she is entitled, shall be liable to the
4 department in an amount equal to three times the amount of such benefits, payments or allowances
5 to which he or she is not entitled, and shall be liable for the payment of reasonable attorney fees and
6 all other fees and costs of litigation.

7 (b) No criminal action or indictment need be brought against any person, firm, corporation
8 or other entity as a condition for establishing civil liability hereunder.

9 (c) A civil action under this section may be prosecuted and maintained on behalf of the
10 department by the Attorney General and the Attorney General's assistants or a prosecuting attorney
11 and the prosecuting attorney's assistants or by any attorney in contract with or employed by the
12 department to provide such representation.

13 **§9-4D-8. Liability of employees of the department.**

14 There is no civil liability on the part of, and no cause of action shall arise against the
15 secretary, the department, its employees or its agents for any action taken by them in good faith and
16 in the lawful performance of their powers and duties under this article.

17 **§9-4D-9. Licensing of vehicles for use by the Medicaid fraud control unit.**

18 For purposes of the responsibilities assigned the unit pursuant to this article, personnel of the
19 unit shall be permitted to operate vehicles owned or leased for the state displaying Class A
20 registration plates.

21 **§9-4D-10. Remedies and penalties not exclusive.**

1 The remedies and penalties provided in this article governing the operation of the medical
2 programs of the department are in addition to those remedies and penalties provided elsewhere by
3 law.

4 **ARTICLE 4E. ASSIGNMENT OF RIGHTS.**

5 **§9-4E-1. Assignment of rights.**

6 (a) Submission of an application to the department is, as a matter of law, an assignment of
7 the right of the applicant or his or her legal representative to recover from third parties past medical
8 expenses paid for by the Medicaid program.

9 (b) At the time an application for medical assistance is made, the department shall include
10 a statement along with the application that explains that the applicant has assigned all of his or her
11 rights as provided in this section and the legal implications of making this assignment.

12 (c) This assignment of rights does not extend to Medicare benefits.

13 (d) This section does not prevent the recipient or his or her legal representative from
14 maintaining an action for injuries or damages sustained by the recipient against any third-party and
15 from including, as part of the compensatory damages sought to be recovered, the amounts of his or
16 her past medical expenses.

17 (e) The department is legally subrogated to the rights of the recipient against the third party.

18 (f) The department shall have a priority right to be paid first out of any payments made to the
19 recipient for past medical expenses before the recipient can recover any of his or her own costs for
20 medical care.

21 (g) A recipient is considered to have authorized all third-parties to release to the department

1 information needed by the department to secure or enforce its rights as assignee under this chapter.

2 **§9-4E-2. Notice requirement for claims and civil actions.**

3 (a) A recipient's legal representative shall provide notice to the department within sixty days
4 of asserting a claim against a third party. If the claim is asserted in a formal civil action, the
5 recipient's legal representative shall notify the department within sixty days of service of the
6 complaint and summons upon the third party by causing a copy of the summons and a copy of the
7 complaint to be served on the department as though it were named a party defendant.

8 (b) If the recipient has no legal representative and the third party knows or reasonably should
9 know that a recipient has no representation then the third party shall provide notice to the department
10 within sixty days of receipt of a claim or within thirty days of receipt of information or
11 documentation reflecting the recipient is receiving Medicaid benefits, whichever is later in time.

12 (c) In any civil action implicated by this section, the department may file a notice of
13 appearance and shall thereafter have the right to file and receive pleadings, intervene and take other
14 action permitted by law.

15 (d) The department shall provide the recipient and the third party, if the recipient is without
16 legal representation, notice of the amount of the purported subrogation lien within thirty days of
17 receipt of notice of the claim. The department shall provide related supplements in a timely manner,
18 but no later than fifteen days after receipt of a request for this information.

19 **§9-4E-3. Notice of settlement requirement.**

20 (a) A recipient or his or her representative shall notify the department of a settlement with
21 a third-party and retain in escrow an amount equal to the amount of the subrogation lien asserted by

1 the department. The notification shall include the amount of the settlement being allocated for past
2 medical expenses paid for by the Medicaid program. Within thirty days of the receipt of any such
3 notice, the department shall notify the recipient of its consent or rejection of the proposed allocation.
4 If the department consents, the recipient or his or her legal representation shall issue payment out
5 of the settlement proceeds in a manner directed by the secretary or his or her designee within thirty
6 days of consent to the proposed allocation.

7 (b) If the total amount of the settlement is less than the department's subrogation lien, then
8 the settling parties shall obtain the department's consent to the settlement before finalizing the
9 settlement. The department shall advise the parties within thirty days and provide a detailed
10 itemization of all past medical expenses paid by the department on behalf of the recipient for which
11 the department seeks reimbursement out of the settlement proceeds.

12 (c) If the department rejects the proposed allocation, the department shall seek a judicial
13 determination within thirty days and provide a detailed itemization of all past medical expenses paid
14 by the department on behalf of the recipient for which the department seeks reimbursement out of
15 the settlement proceeds.

16 (d) If judicial determination becomes necessary, the trial court is required to hold an
17 evidentiary hearing. The recipient and the department shall be provided ample notice of the same
18 and be given just opportunity to present the necessary evidence, including fact witness and expert
19 witness testimony, to establish the amount to which the department is entitled to be reimbursed
20 pursuant to this section.

21 (e) The department has the burden of proving by a preponderance of the evidence that the

1 allocation agreed to by the parties was improper. For purposes of appeal, the trial court's decision
2 should be set forth in a detailed order containing the requisite findings of fact and conclusions of law
3 to support its rulings.

4 (f) Any settlement by a recipient with one or more third-parties which would otherwise fully
5 resolve the recipient's claim for an amount collectively not to exceed \$20,000 shall be exempt from
6 the provisions of this section.

7 (g) Nothing herein prevents a recipient from seeking judicial intervention to resolve any
8 dispute as to allocation prior to effectuating a settlement with a third party.

9 **§9-4E-4. Department failure to respond to notice of settlement.**

10 If the department fails to appropriately respond to a notification of settlement, the amount
11 to which the department is entitled to be paid from the settlement shall be limited to the amount of
12 the settlement the recipient has allocated toward past medical expenses.

13 **§9-4E-5. Penalty for failure to notify the department.**

14 A legal representative acting on behalf of a recipient or third party that fails to comply with
15 the provisions of this article is liable to the department for all reimbursement amounts the
16 department would otherwise have been entitled to collect pursuant to this article but for the failure
17 to comply. Under no circumstances may a pro se recipient be penalized for failing to comply with
18 the provisions of this article.

19 **§9-4E-6. Miscellaneous provisions relating to trial.**

20 (a) Where an action implicated by this section is tried by a jury, the jury may not be informed
21 at any time as to the subrogation lien of the department.

1 (b) Where an action implicated by this section is tried by judge or jury, the trial judge shall,
2 or in the instance of a jury trial, require that the jury, identify precisely the amount of the verdict
3 awarded that represents past medical expenses.

4 (c) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction of
5 the judgment any damages awarded for past medical expenses be withheld and paid directly to the
6 department, not to exceed the amount of past medical expenses paid by the department on behalf of
7 the recipient.

8 **§9-4E-7. Attorneys' fees.**

9 Irrespective of whether an action or claim is terminated by judgment or settlement without
10 trial, from the amount required to be paid to the department there shall be deducted the reasonable
11 costs and attorneys' fees attributable to the amount in accordance with and in proportion to the fee
12 arrangement made between the recipient and his or her attorney of record so that the department shall
13 bear the pro rata share of the reasonable costs and attorneys' fees: *Provided*, That if there is no
14 recovery, the department shall under no circumstances be liable for any costs or attorneys' fees
15 expended in the matter.

16 **§9-4E-8. Class actions and multiple plaintiff actions not authorized.**

17 Nothing in this article authorizes the department to institute a class action or multiple
18 plaintiff action against any manufacturer, distributor or vendor of any product to recover medical
19 care expenditures paid for by the Medicaid program.

20 **§9-4E-9. Secretary's authority.**

21 The secretary or his or her designee may compromise, settle and execute a release of any

1 claim relating to the department's right of subrogation, in whole or in part.

2 **§9-4E-10. Notice of action or claim.**

3 If either the recipient or the department brings an action or claim against a third person, the
4 recipient, his or her attorney or the department shall, within thirty days of filing the action, give to
5 the other written notice of the action or claim by certified mail. This notice shall contain the name
6 of the third person and the court in which the action is brought. If the department institutes the
7 action, the notice shall advise the recipient of their right to bring such action in their own name, in
8 which they may include as a part of their claim the sums claimed by the department. Proof of the
9 notice shall be filed in the action subject to the notice and intent procedure as outlined in section
10 eleven of this article. If an action or claim is brought by either the recipient or the department, the
11 other may, at any time before trial, become a party to the action, or shall consolidate his or her action
12 or claim with the other if brought independently: *Provided*, That this consolidation or entry as a
13 party does not delay the proceedings.

14 **§9-4E-11. Release of information.**

15 (a) All recipients of medical assistance under the Medicaid program are considered to have
16 authorized all third parties, including, but not limited to, insurance companies and providers of
17 medical care, to release to the department information needed by the department to secure or enforce
18 its rights as assignee under this chapter.

19 (b) As a condition of doing business in the state, health insurers, including self-insured plans,
20 group health plans as defined in §6074(a) of the Employee Retirement Income Security Act of 1974,
21 service benefit plans, third-party administrators, managed care organizations, pharmacy benefit

1 managers or other parties that are by statute, contract or agreement, legally responsible for payment
2 of a claim for a health care item or service are required to comply with the following:

3 (1) Upon the request of the Bureau for Medical Services, or its contractor, provide
4 information to determine the period that the service recipients, their spouse or dependents may be
5 or may have been covered by the health insurer, including the nature of the coverage that is or was
6 provided by the health insurer, the name, address, date of birth, Social Security number, group
7 number, identifying number of the plan, and effective and termination dates. The information shall
8 be provided in a format suitable for electronic data matches, conducted under the direction of the
9 department, no less than monthly or as prescribed by the secretary. The health insurer must respond
10 within sixty working days after receipt of a written request for enrollment data from the department
11 or its contractor;

12 (2) Accept the right of the Bureau for Medical Services of recovery and the assignment to
13 the state of any right of an individual or other entity to payment from the party for an item or service
14 for which payment has been made by the Bureau for Medical Services;

15 (3) Respond to any inquiry by the Bureau for Medical Services regarding a claim for payment
16 for any health care item or service that is submitted not later than three years after the date of the
17 provision of the health care item or service; and

18 (4) Accept a claim submitted by the Bureau for Medical Services regardless of the date of
19 submission of the claim, the type or format of the claim form, lack of preauthorization or the failure
20 to present proper documentation at the point-of-sale that is the basis of the claim: *Provided*, That
21 the claim is submitted by the Bureau for Medical Services within the three-year period beginning on

1 the date on which the item or service was furnished and any action by the Bureau for Medical
2 Services to enforce its right with respect to the claim is commenced within six years of the Bureau
3 for Medical Services' submission of the claim.

4 **§9-4E-12. Right of the Department to recover medical assistance.**

5 (a) Upon the death of a person who was fifty-five years of age or older at the time the person
6 received assistance consisting of nursing facility services, home and community-based services, and
7 related hospital and prescription drug services, the department, in addition to any other available
8 remedy, may file a claim or lien against the estate of the recipient for the total amount of medical
9 assistance provided by Medicaid for nursing facility services, home and community-based services,
10 and related hospital and prescription drug services provided for the benefit of the recipient. Claims
11 so filed shall be classified as and included in the class of debts due the state.

12 (b) The department may recover pursuant to subsection (a) only after the death of the
13 individual's surviving spouse, if any and only after such time as the individual has no surviving
14 children under the age of twenty-one, or when the individual has no surviving children who meet the
15 Social Security Act's definition of blindness or permanent and total disability.

16 (c) The state may place a lien upon the property of individuals who are inpatients in a nursing
17 facility, intermediate care facility for individuals with an intellectual disability or other medical
18 institution who, after notice and an opportunity for a hearing, the state has deemed to be permanently
19 institutionalized. This lien shall be in an amount equal to Medicaid expenditures for services
20 provided by a nursing facility, intermediate care facility for individuals with an intellectual disability
21 or other medical institution, and shall be rendered against the proceeds of the sale of property except

1 for a minimal amount reserved for the individual's personal needs. Any such lien dissolves upon
2 that individual's discharge from the medical institution. The secretary has authority to compromise
3 or otherwise reduce the amount of this lien in cases where enforcement would create a hardship.

4 (d) No lien may be imposed on an individual's home when the home is the lawful residence
5 of:

6 (1) The spouse of the individual;

7 (2) The individual's child who is under the age of twenty-one;

8 (3) The individual's child who meets the Social Security Act's definition of blindness or
9 permanent and total disability; or

10 (4) The individual's sibling who has an equity interest in the home and was residing in the
11 home for a period of at least one year immediately before the date of the individual's admission to
12 a medical institution.

13 (e) The filing of a claim, pursuant to this section, neither reduces or diminishes the general
14 claims of the department, except that the department may not receive double recovery for the same
15 expenditure. The death of the recipient neither extinguishes or diminishes any right of the
16 department to recover. Nothing in this section affects or prevents a proceeding to enforce a lien
17 pursuant to this section or a proceeding to set aside a fraudulent conveyance.

18 (f) Any claim or lien imposed pursuant to this section is effective for the full amount of
19 medical assistance provided by Medicaid for nursing facility services, home and community-based
20 services, and related hospital and prescription drug services. The lien attaches and is perfected
21 automatically as of the beginning date of medical assistance, the date when a recipient first receives

1 treatment for which the department may be obligated to provide medical assistance. A claim may
2 be waived by the department, if the department determines, pursuant to applicable federal law and
3 rules and regulations, that the claim will cause substantial hardship to the surviving dependents of
4 the deceased.

5 **ARTICLE 5. WV WORKS ACT.**

6 **§9-5-1. Short title.**

7 This article may be cited as the "WV Works Act".

8 **§9-5-2. Legislative findings; purpose.**

9 (a) The Legislature hereby finds and declares that:

10 (1) The entitlement of any person to receive federal-state cash assistance is hereby
11 discontinued;

12 (2) At-risk families are capable of becoming self-supporting;

13 (3) An assistance program should both expect and assist a parent and caretaker-relatives in
14 at-risk families to support their dependent children and children for which they are caretakers;

15 (4) Every parent or caretaker-relative can exhibit responsible patterns of behavior so as to be
16 a positive role model;

17 (5) Every parent or caretaker-relative who receives cash assistance has a responsibility to
18 participate in an activity to help them prepare for, obtain and maintain gainful employment;

19 (6) For a parent or caretaker-relative who receives cash assistance and for whom full-time
20 work is not feasible, participation in some activity is required to further himself or herself, his or her
21 family or his or her community;

1 (7) The state should promote the value of work and the capabilities of individuals;

2 (8) Job development efforts should enhance the employment opportunities of participants;

3 (9) Education is the key to achieving and maintaining life-long self-sufficiency; and

4 (10) An assistance program should be structured to achieve a clear set of outcomes; deliver
5 services in an expedient, effective and efficient manner; and maximize community support for
6 participants.

7 (b) The goals of the program are to achieve more efficient and effective use of public
8 assistance funds; reduce dependency on public programs by promoting self-sufficiency; and structure
9 the assistance programs to emphasize employment and personal responsibility. The success of the
10 program is to be evaluated on the following activities, including, but not limited to: Job entry, job
11 retention, federal work participation requirements and completion of educational activities.

12 **§9-5-3. Definitions.**

13 For the purposes of this article:

14 "Income" means money received by any member of an at-risk family which can be used at
15 the discretion of the household to meet its basic needs: *Provided*, That income does not include:

16 (1) Supplemental security income paid to any member or members of the at-risk family;

17 (2) Earnings of minor children;

18 (3) Payments received from earned income tax credit or tax refunds;

19 (4) Earnings deposited in an individual development account approved by the department;

20 (5) Any educational grant or scholarship income regardless of source; or

21 (6) Any moneys specifically excluded from countable income by federal law;

1 **§9-5-4. Authorization for program.**

2 (a) The secretary shall conduct the West Virginia Works Program in accordance with this
3 article and any applicable regulations promulgated by the secretary of the federal Department of
4 Health and Human Services in accordance with federal block-grant funding or similar federal
5 funding stream. This program shall expend only the funds appropriated by the Legislature to
6 establish and operate the program or any other funds available to the program; establish
7 administrative due process procedures for reduction or termination proceedings; and implement any
8 other procedures necessary to accomplish the purpose of this article.

9 (b) The West Virginia Works Program does not create an entitlement to that program or any
10 services offered within that program, unless entitlement is created pursuant to a federal law or
11 regulation. The West Virginia Works Program and each component of that program or the
12 expansion of any component established pursuant to federal law or regulation is subject to the annual
13 appropriation of funds by the Legislature.

14 **§9-5-5. WV works program fund.**

15 There is continued a special account within the State Treasury to be known as the "West
16 Virginia Works Program Fund". Expenditures from the fund shall be used exclusively to meet the
17 necessary expenditures of the program, including wage reimbursements to participating employers,
18 temporary assistance to needy families, payments for support services, employment-related child care
19 payments, transportation expenses and administrative costs directly associated with the operation
20 of the program. Moneys paid into the account shall be from specific annual appropriations of funds
21 by the Legislature.

1 **§9-5-6. Program participation.**

2 (a) Unless otherwise noted in this article, all adult beneficiaries of cash assistance and work
3 eligible individuals shall participate in the West Virginia Works Program in accordance with the
4 provisions of this article. The level of participation, services to be delivered and work requirements
5 shall be defined through legislative rules established by the secretary.

6 (b) Any individual exempt under the provisions of section eight of this article may participate
7 in the activities and programs offered through the West Virginia Works Program.

8 (c) Support services other than cash assistance through the West Virginia Works Program
9 may be provided to at-risk families to assist in meeting the work requirements or to eliminate the
10 need for cash assistance.

11 (d) Cash assistance through the West Virginia Works Program may be provided to an at-risk
12 family if the combined family income, as defined in section three of this article, is below the income
13 test levels established by the department, subject to the following:

14 (1) Any adult member of an at-risk family who receives supplemental security income shall
15 be excluded from the benefit group;

16 (2) Within the limits of funds appropriated therefor, an at-risk family that includes a married
17 man and woman and dependent children of either one or both may receive an additional cash
18 assistance benefit in an amount of \$100 or less; and

19 (3) An at-risk family shall receive an additional cash assistance benefit in the amount of \$25
20 regardless of the amount of child support collected in a month on behalf of a child or children of the
21 at-risk family, as allowed by federal law.

1 **§9-5-7. Work requirements.**

2 (a) Unless otherwise exempted by the provisions of section eight of this article, the West
3 Virginia Works Program shall require that anyone who possesses a high school diploma, or its
4 equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational
5 or training program for at least the minimum number of hours per week required by federal law
6 under the work participation rate requirements for all families in order to receive any form of cash
7 assistance. Participation in any education or training activity shall be counted toward satisfaction
8 of the work requirement imposed by this section to the extent permissible under federal law and
9 regulation: *Provided*, That the participant demonstrates adequate progress toward completion of the
10 program. In accordance with federal law or regulation, the work, education and training
11 requirements of this section are waived for any qualifying participant with a child under six years
12 of age if the participant is unable to obtain appropriate and available child care services.

13 (b) The department and representatives of the Higher Education Policy Commission and the
14 West Virginia Council for Community and Technical College Education shall develop and
15 implement a plan to use and expand the programs available at the state's community and technical
16 colleges, colleges and universities to assist beneficiaries or participants who are enrolled or wish to
17 become enrolled in vocational-educational training not to exceed twelve months with respect to any
18 individual to meet the work requirements of this section. Vocational-educational training shall be
19 supervised daily and on an ongoing basis.

20 **§9-5-8. Exemptions.**

21 The secretary shall establish by rule categories of persons exempt, but the exemption applies

1 only to the work requirements of the program: *Provided*, That a person who is exempt from the
2 work requirements may nevertheless participate voluntarily in work activities. The categories of
3 exemptions are limited to the following:

4 (1) Undocumented aliens and aliens under the five-year ban;

5 (2) Parents, or at state option on a case-by-case basis, anyone receiving supplemental security
6 income;

7 (3) A parent who is providing medically necessary care for a disabled family member who
8 resides in the home and is not a full-time student;

9 (4) Minor parents who are not head of household (spouses of the head of household); and

10 (5) Grandparents and other nonparental caretakers.

11 **§9-5-9. Personal responsibility contract.**

12 (a)(1) Every eligible adult beneficiary and work eligible individual shall participate in a
13 program orientation, family assessments and in the development, and subsequent revisions, of a
14 personal responsibility contract. The contract shall be defined based on the program time limits,
15 support services available, work requirements and family assessments.

16 (2) The participant's contract shall include the following requirements:

17 (A) That the participant develop and maintain, with the appropriate health care provider, a
18 schedule of preventive care for his or her dependent child or children, including routine examinations
19 and immunizations;

20 (B) Assurance of school attendance for school-age children under his or her care;

21 (C) Assurance of properly supervised child care, including after-school care;

1 (D) Establishment of paternity or active pursuit of child support, or both, if applicable and
2 if considered necessary; and

3 (E) Nutrition or other counseling, parenting or family-planning classes.

4 (3) If the participant is a teenage parent, he or she may work, but the contract shall include
5 the requirements that the participant:

6 (A) Remain in an educational activity to complete high school, obtain a general equivalency
7 diploma or obtain vocational training and make satisfactory scholastic progress;

8 (B) Attend parenting classes or participate in a mentorship program, or both, if appropriate;
9 and

10 (C) Live at home with his or her parent or guardian or in some other adult-supervised
11 arrangements if he or she is an unemancipated minor.

12 (4) If the participant is under the age of twenty years and does not have a high school diploma
13 or its equivalent, the contract shall include requirements to participate in mandatory education or
14 training which, if the participant is unemployed, may include a return to high school, with
15 satisfactory scholastic progress required.

16 (b) In order to receive cash assistance, the participant shall enter into a personal responsibility
17 contract. If the participant refuses to sign the personal responsibility contract, the participant and
18 family members are ineligible to receive cash assistance: *Provided*, That a participant who alleges
19 that the terms of a personal responsibility contract are inappropriate based on his or her individual
20 circumstances may request and shall be provided a fair and impartial hearing in accordance with
21 administrative procedures established by the department and due process of law. A participant who

1 signs a personal responsibility contract or complies with a personal responsibility contract does not
2 waive his or her right to request and receive a hearing under this subsection.

3 (c) Personal responsibility contracts shall be drafted by the department on a case-by-case
4 basis; take into consideration the individual circumstances of each beneficiary; reviewed and
5 reevaluated periodically, but not less than on an annual basis; and, in the discretion of the
6 department, amended on a periodic basis.

7 **§9-5-10. Participation limitation; exceptions.**

8 The length of time a participant may receive cash assistance through the West Virginia
9 Works Program may not exceed a period longer than sixty months, except in circumstances as
10 defined by the secretary.

11 **§9-5-11. Breach of contract; notice; sanctions.**

12 (a) The department may terminate cash assistance benefits to an at-risk family if it finds any
13 of the following:

14 (1) Fraud or deception by the beneficiary in applying for or receiving program benefits;

15 (2) A substantial breach by the beneficiary of the requirements and obligations set forth in
16 the personal responsibility contract and any amendments or addenda to the contract; or

17 (3) A violation by the beneficiary of any provision of the personal responsibility contract or
18 any amendments or addenda to the contract, this article, or any rule promulgated by the secretary
19 pursuant to this article.

20 (b) If the department determines that benefits received by the beneficiary are subject to
21 reduction or termination, written notice of the reduction or termination and the reason for the

1 reduction or termination shall be deposited in the United States mail, postage prepaid and addressed
2 to the beneficiary at his or her last known address at least thirteen days prior to the termination or
3 reduction. The notice shall state the action being taken by the department and grant to the
4 beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the department
5 in accordance with administrative procedures established by the department and due process of law.

6 (c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has
7 the burden of proving that his or her benefits were improperly reduced or terminated and shall bear
8 his or her own costs, including attorneys fees.

9 (d) The secretary shall determine by rule what constitutes de minimis violations and those
10 violations subject to sanctions and maximum penalties. If the department finds that a beneficiary
11 has violated any provision of this article, of his or her personal responsibility contract or any
12 amendment or addenda to the contract, or any applicable department rule, the department shall
13 impose sanctions against the beneficiary as follows:

14 (1) For the first violation, a one-third reduction of benefits for three months;

15 (2) For a second violation, a two-thirds reduction of benefits for three months;

16 (3) For a third or subsequent violation, a total termination of benefits for three months.

17 (e) For any sanction imposed pursuant to subsection (d) of this section, if the beneficiary is
18 found to have good cause for noncompliance, as defined by the secretary, the reduction or
19 termination in benefits shall not be imposed and the violation shall not count in determining the level
20 of sanction to be imposed for any future violation. Once a reduction in benefits is in effect, it shall
21 remain in effect for the designated time period: *Provided*, That if a participant incurs a subsequent

1 sanction before the sanction for a previous violation has expired, the sanctions shall run
2 concurrently: *Provided, however,* That if a third violation occurs before the period for a previous
3 sanction has expired, benefits shall be terminated and may not be reinstated until the three-month
4 termination period has expired.

5 **§9-5-12. Diversionary assistance allowance in lieu of monthly cash assistance.**

6 (a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance
7 from the state, the secretary may issue one-time diversionary assistance allowances to families in an
8 amount not to exceed the equivalent of three months of cash assistance in order to enable the families
9 to become immediately self-supporting.

10 (b) The secretary shall establish by rule the standards to be considered in making diversionary
11 assistance allowances.

12 (c) Nothing in this section may be construed to require that the department or any assistance
13 issued pursuant to this section be subject to any of the provisions of chapter thirty-one or chapter
14 forty-six-a of this code.

15 **§9-5-13. Subsidized employment.**

16 (a) To the extent that resources are available, an employer may be paid a subsidy by the
17 department to employ a parent or caretaker-relative of an at-risk family if the employer agrees to hire
18 the West Virginia Works Program participant at the end of the subsidized period. If the employer
19 does not hire the participant at the end of the subsidized period, the program may not use that
20 employer for subsidized employment for the next twelve months.

21 (b) If the department determines that an employer has demonstrated a pattern of discharging

1 employees hired pursuant to the provisions of this section subsequent to the expiration of the
2 subsidized period without good cause, the employer shall no longer be eligible for participation in
3 the subsidized employment program for a period to be determined by the department.

4 **§9-5-14. Transitional assistance.**

5 The West Virginia Works Program may provide transitional assistance in the form of
6 supportive services.

7 **§9-5-15. Interagency coordination.**

8 (a) The Legislature encourages the development of a system of coordinated services, shared
9 information and streamlined application procedures between the program and the other agencies
10 within the department to implement the provisions of this article. The secretary shall require the
11 coordination of activities between the program and the following agencies:

12 (b) The child support enforcement division for the purpose of establishing paternity,
13 promoting cooperation in the pursuit of child support, encouraging noncustodial parents to get job
14 search assistance and determining eligibility for cash assistance and support services;

15 (c) The Bureau of Public Health for the purpose of determining appropriate immunization
16 schedules, delivery systems and verification procedures; and

17 (d) The bureau for the purpose of reporting eligibility for medical assistance and transitional
18 benefits.

19 (e) The secretary may require the coordination of procedures and services with any other
20 agency he or she considers necessary to implement this program: *Provided*, That all agencies
21 coordinating services with the department shall, when provided with access to department records

1 or information, abide by state and federal confidentiality requirements including the provisions of
2 section twenty of this article.

3 (f) The secretary shall propose any rules, including emergency rules, necessary for the
4 coordination of various agency activities in the implementation of this section.

5 **§9-5-16. Intergovernmental coordination.**

6 (a) The Commissioner of the Bureau of Employment Programs and the Superintendent of the
7 Department of Education shall assist the secretary in the establishment of the West Virginia Works
8 Program. Before implementation of this program, each department shall address in its respective
9 plan the method in which its resources will be devoted to facilitate the identification of or delivery
10 of services for participants and shall coordinate its respective programs with the department in the
11 provision of services to participants and their families. Each county board of education shall
12 designate a person to coordinate with the local Department of Health and Human Resources office
13 the board's services to participant families and that person shall work to achieve coordination at the
14 local level.

15 (b) The secretary and the superintendent shall develop a plan for program implementation
16 to occur with the use of existing state facilities and county transportation systems within the project
17 areas whenever practicable. This agreement shall include, but not be limited to, the use of buildings,
18 grounds and buses. Whenever possible, the supportive services, education and training programs
19 should be offered at the existing school facilities.

20 (c) The commissioner shall give priority to participants of the West Virginia Works Program
21 within the various programs of the Bureau of Employment Programs. The secretary and the

1 commissioner shall develop reporting and monitoring mechanisms between their respective agencies.

2 **§9-5-17. Public-private partnerships.**

3 The secretary may enter into agreements with any private, nonprofit, charitable or religious
4 organizations to promote the development of the community support services necessary for the
5 effective implementation of this program, including cooperative arrangements with private
6 employers of former program participants for the purpose of obtaining and maintaining
7 employer-based family health insurance coverage for former participants and their spouses and
8 dependent children through direct payments to the employers out of funds appropriated for the
9 cooperative agreements.

10 **§9-5-18. Relationship with other law.**

11 If any provision of this article conflicts with any other provision of this code or rules, the
12 provisions of this article supersede such provisions: *Provided*, That the provisions of this article
13 may not supersede any provisions which are required or mandated by federal law.

14 Any reference in this code or rules to "aid to families with dependent children" means
15 "temporary assistance for needy families" or any successor state program funded under Part A, Title
16 IV of the Social Security Act.

17 **§9-5-19. Legislative oversight.**

18 The Legislative Oversight Commission on Health and Human Resources Accountability is
19 charged with immediate and ongoing oversight of the program created by this article. This
20 commission shall study, review and examine the work of the program, the department and its staff;
21 study, review and examine all rules proposed by the department; and monitor the development and

1 implementation of the West Virginia Works Program. The commission shall review and make
2 recommendations to the Legislature and the Legislative Rule - Making Review Committee regarding
3 any plan, policy or rule proposed by the secretary, the department or the program.

4 **§9-5-20. Confidentiality, fines and penalties.**

5 (a) Except as otherwise provided in this code or rules, all records and information of the
6 department regarding any beneficiary or beneficiary's family members, including food stamps, child
7 support and Medicaid records, are confidential and may not be released, except under the following
8 circumstances:

9 (1) If permissible under state or federal rules or regulations;

10 (2) Upon the express written consent of the beneficiary or his or her legally authorized
11 representative;

12 (3) Pursuant to an order of any court of record of this state or the United States based upon
13 a finding that the information is sufficiently relevant to a proceeding before the court to outweigh
14 the importance of maintaining the confidentiality established by this section: *Provided*, That all
15 confidential records and information presented to the court shall after review be sealed by the clerk
16 and shall not be open to any person except upon order of the court upon good cause being shown for
17 the confidential records and information to be opened; or

18 (4) To a department or division of the state or other entity, pursuant to the terms of an
19 interagency or other agreement: *Provided*, That any agreement specifically references this section
20 and extends its requirements for confidentiality to the other entity receiving the records or
21 information, its agents and employees.

1 (b) Any person who knowingly and willfully releases or causes to be released the confidential
2 records and information described in this section, except under the specific circumstances
3 enumerated in this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined
4 not more than \$500 or confined in a regional jail for not more than six months, or both.

5 **§9-5-21. West Virginia Works Separate State College Program; eligibility; special revenue**
6 **account.**

7 (a) The West Virginia Works Separate State College Program is continued. The program
8 shall provide funding for participants who are enrolled in post-secondary courses leading to a two-
9 or four-year degree. There is continued within the State Treasury a special revenue account to be
10 known as the “West Virginia Works Separate State College Program Fund”. Expenditures from the
11 fund shall be for the purposes set forth in this section and are not authorized from collections but are
12 to be made only in accordance with appropriations by the Legislature and in accordance with the
13 provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of
14 article two, chapter eleven-b of this code. Necessary expenditures include wage reimbursements to
15 participating employers, temporary assistance to needy families, payments for support services,
16 employment-related child care payments, transportation expenses and administrative costs directly
17 associated with the operation of the program.

18 (b) All eligible adults attending post-secondary courses leading to a two- or four-year degree
19 and who are not participating in vocational education training, as that term is defined in this article,
20 shall be enrolled in the West Virginia Works Separate State College Program. Participants in the
21 program may not be required to engage in more than ten hours per week of federally defined work

1 activities. The work, education and training requirements of this article are waived for any
2 qualifying participant with a child under six years of age if the participant is unable to obtain
3 appropriate and available child care services. All other requirements of West Virginia Works
4 Program apply to program administration for adults enrolled in the program.

5 (c) The department shall work with the Higher Education Policy Commission, as set forth
6 in article one-b, chapter eighteen-b of this code, and the Council for Community and Technical
7 College Education, as set forth in article two-b, chapter eighteen-b of this code, to develop and
8 implement a plan to use and expend funds for the programs available at the state's community and
9 technical colleges and colleges and universities to assist participants who are enrolled, or wish to
10 become enrolled, in two- and four-year degree programs of post-secondary education to meet the
11 work requirements of this article.

12 **§9-5-24. West Virginia Works Separate State Two-Parent Families Program.**

13 (a) The West Virginia Works Separate State Two-Parent Families Program is continued. The
14 program shall provide funding for participants who are a two-parent family as that term is defined
15 in this article. There is continued within the State Treasury a special revenue account to be known
16 as the West Virginia Works Separate State Two-Parent Program Fund. Expenditures from the fund
17 shall be for the purposes set forth in this section and are not authorized from collections but are to
18 be made only in accordance with appropriations by the Legislature and in accordance with the
19 provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of
20 article two, chapter eleven-b of this code. Necessary expenditures include wage reimbursements to
21 participating employers, temporary assistance to needy families, payments for support services,

1 employment-related child care payments, transportation expenses and administrative costs directly
2 associated with the operation of the program.

3 (b) All eligible two parent families shall enroll in the West Virginia Works Separate State
4 Two-Parent Families Program. All requirements of West Virginia Works shall apply to program
5 administration for two-parent families enrolled in the program.

6 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

7 **§9-6-1. Exemption of grants from certain taxes and claims.**

8 Grants assistance received under the provisions of this chapter are exempted from the
9 collection of taxes except sales taxes, from levy of execution, garnishment, suggestion, and any other
10 legal process.

11 **§9-6-2. Release of liens and reassignment of insurance policies.**

12 All liens and claims upon real and personal property and all assignments of insurance
13 policies, imposed, existing or made under the provisions of chapter one, Acts of the Legislature, first
14 extraordinary session, 1936, chapter one hundred five, Acts of the Legislature, regular session, 1939,
15 chapter seventy-four, Acts of the Legislature, regular session, 1941, chapter one hundred
16 twenty-four, Acts of the Legislature, regular session, 1947, and chapter one hundred forty-three, Acts
17 of the Legislature, regular session, 1953, which have not been released or reassigned, shall be
18 released or reassigned by the commissioner by the preparation, execution and acknowledgment of
19 a release of each lien or claim and by the delivery of the release to the person or persons entitled
20 thereto for recordation and by a reassignment of each such insurance policy to the person or persons
21 entitled thereto.

1 **§9-6-3. Recipient of assistance not a pauper.**

2 A recipient of assistance may not be deemed a pauper by reason of the receipt of assistance.

3 **§9-6-4. Penalties for false statements, etc.**

4 Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in
5 obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by
6 impersonation of any other fraudulent device:

7 (1) Any assistance to which the applicant or recipient is not entitled; or

8 (2) Any assistance in excess of that to which the applicant or recipient is justly entitled; shall
9 upon conviction be punished as follows:

10 (A) If the aggregate value of all funds or other benefits obtained or attempted to be obtained
11 is \$500 or less, the person so convicted shall be guilty of a misdemeanor and, shall be fined not more
12 than \$1,000 or confined in jail not exceeding one year; or

13 (B) If the aggregate value of all funds or other benefits obtained or attempted to be obtained
14 exceeds \$500, the person so convicted shall be guilty of a felony and, shall be fined not more than
15 \$5,000 or confined in jail not less than one year nor more than five years.

16 **§9-6-5. Liability of relatives for support.**

17 (a) The relatives of an indigent person, who are of sufficient ability, are liable to support the
18 person in the manner required by the department and to pay the expenses of burial when he or she
19 dies, in the following order:

20 (1) The children.

21 (2) The father.

1 (3) The brothers and sisters.

2 (4) The mother.

3 (b) The commissioner may proceed by motion in the circuit court of the county in which the
4 indigent person may be, against one or more of the relatives liable.

5 (c) If a relative so liable does not reside in this state and has no estate or debts due him or her
6 within the state by means of which the liability can be enforced against him or her, the other relatives
7 shall be liable as provided by this section, but a relative shall not be compelled to receive the
8 indigent person in his or her own home.

9 (d) If it appears that a relative liable for the support of an indigent person is unable wholly
10 to support him or her, but is able to contribute toward his or her support, the court may assess upon
11 the relative the proportion which he or she shall be required to contribute either to the past expense
12 incurred by the department or to the future support. The court may assess the residue upon the
13 relatives in the order of their liability.

14 (e) Payment with interest and costs may be enforced by execution.

15 **§9-6-6. Funeral expenses for indigent persons; filing of affidavit to certify indigency; penalties**
16 **for false swearing; payment by division.**

17 (a) The department shall pay for reasonable funeral service expenses for indigent persons,
18 in an amount not to exceed \$1,250.

19 (b) For purposes of this section, the indigency of a deceased person is determined by the
20 filing of an affidavit with the department, in a form provided by and determined in accordance with
21 the income guidelines as set forth by the department:

1 (1) Signed by the heir or heirs-at-law which states that the estate of the deceased person is
2 pecuniarily unable to pay the costs associated with a funeral; or

3 (2) Signed by the county coroner or the county health officer, the attending physician or other
4 person signing the death certificate or the state medical examiner stating that the deceased person
5 has no heirs or that heirs have not been located after a reasonable search and that the deceased person
6 had no estate or the estate is pecuniarily unable to pay the costs associated with a funeral.

7 (c) Payment shall be made by the department to the person or persons who have furnished
8 the services and supplies for the indigent person's funeral expenses or to the persons who have
9 advanced payment for same, as the department may determine, pursuant to appropriations for
10 expenditures made by the Legislature for such purpose.

11 (d) Any person who knowingly swears falsely in an affidavit required by this section shall
12 be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or
13 confined in a regional jail for a period of not more than six months, or both.

14 **ARTICLE 7. SOCIAL SERVICES FOR ADULTS.**

15 **§9-7-1. Definitions.**

16 The words and terms, used in this article, mean the following:

17 (1) "Adult protective services agency" means any public or nonprofit private agency,
18 corporation, board or organization furnishing protective services to adults;

19 (2) "Abuse" means the infliction or threat to inflict physical pain or injury on or the
20 imprisonment of any incapacitated adult or facility resident;

21 (3) "Neglect" means:

1 (A) The failure to provide the necessities of life to an incapacitated adult or facility resident
2 with intent to coerce or physically harm the incapacitated adult or resident; and

3 (B) The unlawful expenditure or willful dissipation of the funds or other assets owned or paid
4 to or for the benefit of an incapacitated adult or resident;

5 (4) "Incapacitated adult" means any person who by reason of physical, mental or other
6 infirmity is unable to independently carry on the daily activities of life necessary to sustaining life
7 and reasonable health;

8 (5) "Emergency" or "emergency situation" means a situation or set of circumstances which
9 presents a substantial and immediate risk of death or serious injury to an incapacitated adult;

10 (6) "Legal representative" means a person lawfully invested with the power and charged with
11 the duty of taking care of another person or with managing the property and rights of another person,
12 including, but not limited to, a guardian, conservator, medical power of attorney representative,
13 trustee or other duly appointed person;

14 (7) "Nursing home" or "facility" means any institution, residence, intermediate care facility
15 for the mentally retarded, care home or any other adult residential facility, or any part or unit thereof,
16 that is subject to the provisions of articles five-c, five-d, five-e or five-h, chapter sixteen of this code;

17 (8) "Regional long-term care ombudsman" means any paid staff of a designated regional
18 long-term care ombudsman program who has obtained appropriate certification from the bureau for
19 senior services and meets the qualifications set forth in section seven, article five-l, chapter sixteen
20 of this code;

21 (9) "Facility resident" means an individual living in a nursing home or other facility, as that

1 term is defined in subdivision (7) of this section;

2 (10) "Responsible family member" means a member of a resident's family who has
3 undertaken primary responsibility for the care of the resident and who has established a working
4 relationship with the nursing home or other facility in which the resident resides. For purposes of
5 this article, a responsible family member may include someone other than the resident's legal
6 representative;

7 (11) "State long-term care ombudsman" means an individual who meets the qualifications
8 of section five, article five-1, chapter sixteen of this code and who is employed by the state bureau
9 for senior services to implement the state long-term care ombudsman program.

10 **§9-7-2. Adult protective services; immunity from civil liability; rules; organization and duties.**

11 (a) There is continued within the department the system of adult protective services
12 heretofore existing.

13 (b) The secretary shall propose rules for legislative approval in accordance with the
14 provisions of article three, chapter twenty-nine-a of this code regarding the organization and duties
15 of the adult protective services system and the procedures to be used by the department to effectuate
16 the purposes of this article. The rules may be amended and supplemented from time to time.

17 (c) The secretary shall design and arrange such rules to attain, or move toward the attainment,
18 of the following goals to the extent that the secretary believes feasible under the provisions of this
19 article within the state appropriations and other funds available:

20 (1) Assisting adults who are abused, neglected or incapacitated in achieving or maintaining
21 self-sufficiency and self-support and preventing, reducing and eliminating their dependency on the

1 state;

2 (2) Preventing, reducing and eliminating neglect and abuse of adults who are unable to
3 protect their own interests;

4 (3) Preventing and reducing institutional care of adults by providing less intensive forms of
5 care, preferably in the home;

6 (4) Referring and admitting abused, neglected or incapacitated adults to institutional care only
7 where other available services are inappropriate;

8 (5) Providing services and monitoring to adults in institutions designed to assist adults in
9 returning to community settings;

10 (6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility
11 residents through the joint efforts of the various agencies of the department, the adult protective
12 services system, the state and regional long-term care ombudsmen, administrators of nursing homes
13 or other residential facilities and county prosecutors;

14 (7) Preventing, reducing and eliminating abuse and neglect of residents in nursing homes or
15 facilities; and

16 (8) Coordinating investigation activities for complaints of abuse and neglect of incapacitated
17 adults and facility residents among the various agencies of the department, the adult protective
18 services system, the state and regional long-term care ombudsmen, administrators of nursing homes
19 or other residential facilities, county prosecutors, if necessary, and other state or federal agencies or
20 officials, as appropriate.

21 (d) No adult protective services caseworker may be held personally liable for any professional

1 decision or action thereupon arrived at in the performance of his or her official duties as set forth in
2 this section or agency rules promulgated thereupon: *Provided*, That nothing in this subsection
3 protects any adult protective services worker from any liability arising from the operation of a motor
4 vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional
5 misconduct.

6 (e) The rules proposed by the secretary shall provide for the means by which the department
7 cooperates with federal, state and other agencies to fulfill the objectives of the system of adult
8 protective services.

9 **§9-7-3. Cooperation among agencies; termination and reduction of assistance by**
10 **commissioner.**

11 The secretary shall direct the coordination of the investigation of complaints of abuse or
12 neglect made pursuant to this article; and the various agencies of the department, the adult protective
13 services system, the state and regional long-term care ombudsmen, administrators of nursing homes
14 or other residential facilities, county prosecutors and any other applicable state or federal agency
15 shall cooperate among each other for the purposes of observing, reporting, investigating and acting
16 upon complaints of abuse or neglect of any incapacitated adult or facility resident in this state.

17 **§9-7-4. Action to abate abuse, neglect or emergency.**

18 The department or any reputable person may bring and maintain an action against any person
19 having actual care, custody or control of an incapacitated adult, for injunctive relief, including a
20 preliminary injunction, to restrain and abate any abuse or neglect of an incapacitated adult or to abate
21 an emergency situation. In any such proceeding the court shall appoint a guardian ad litem, to

1 protect the interests of the incapacitated adult, who may not be an employee of the state nor be a
2 party to the proceeding nor be selected by or in the employ of any party to the proceeding: *Provided,*
3 That the court may by order terminate assistance granted or paid to any person found to have abused
4 or neglected an incapacitated adult and order any such assistance to be paid to another person solely
5 for the use and benefit of such abused or neglected person, and grant such other equitable relief as
6 may be appropriate in the circumstances to restrain and abate such abuse or neglect: *Provided,*
7 *however,* That in the case of an action to abate an emergency situation, the court may grant the relief
8 authorized in section five of this article.

9 **§9-7-5. Emergency immediate remedial treatment; procedure.**

10 (a) Whenever a circuit court finds in an action to abate an emergency situation that there is
11 probable cause to believe that an incapacitated adult is in an emergency situation and that the person
12 or persons having the immediate care, custody and control of the incapacitated adult refuses to take
13 necessary steps to alleviate the emergency, or that the incapacitated adult is without the actual care,
14 custody and control of any persons, it may issue an order of attachment for the incapacitated adult
15 and direct that the peace officer executing the same deliver the incapacitated adult in his or her
16 custody to a hospital or other safe place except a jail, for immediate remedial treatment to reduce or
17 avoid the risk of death or serious injury. In the event, that an order of attachment is issued pursuant
18 to this section, any peace officer executing the order, and any employees of the department the peace
19 officer directs to accompany him or her, may enter into the place of abode to remove the
20 incapacitated person, notwithstanding the residence therein of other persons.

21 (b) If any employee or officer of the department by direct observation of an incapacitated

1 adult not in the immediate care, custody or control of another has reasonable cause to believe that
2 the incapacitated person is then and there in an emergency situation, then the officer or employee
3 may offer transportation to a hospital or other safe place, other than a jail, to the incapacitated adult
4 for immediate remedial treatment to reduce or avoid the risk of death, or serious injury.

5 (c) Immediately upon delivery of any incapacitated person to a hospital or other safe place,
6 the officer or employee shall apply to the circuit court for and the court shall appoint, and in the case
7 of an attachment the court shall contemporaneously with its issuance appoint, a guardian ad litem
8 who may not be an employee of the state, nor be an interested party nor be selected by nor in the
9 employ of any interested party, to represent the interests of the incapacitated adult, and the court shall
10 fix a time, not later than one judicial day later, to determine if the remedial treatment shall continue
11 or the incapacitated adult should be released. A copy of that attachment and notice of the hearing
12 shall be served on any person in whose actual care, custody and control the incapacitated adult is
13 found. If further remedial treatment is required, application shall be promptly made to the county
14 commission or other proper tribunal for appropriate relief: *Provided*, That the commitment for
15 further remedial treatment may be continued until proceedings for appropriate relief are concluded:
16 *Provided, however*, That application for release from such remedial treatment may be made and
17 granted at any time that the emergency ceases.

18 **§9-7-6. Payment and termination of payment for services to incapacitated adult.**

19 If any incapacitated adult:

20 (1) Requires and is granted remedial treatment for an emergency or the department
21 determines that an incapacitated adult is

1 (2) Abused, or is

2 (3) Neglected, the department may pay any assistance granted for the use and benefit of the
3 incapacitated adult to the person actually providing care for the adult, and terminate payments to any
4 person alleged or shown to have abused or neglected the incapacitated adult, or to whom payments
5 were made prior to the remedial treatment, for so long as the remedial treatment continues, or until
6 the abuse or neglect is abated, and the incapacitated adult continues to be in the immediate care,
7 custody and control of such person.

8 **§9-7-7. Comprehensive system of adult protective services; compulsory assistance prohibited.**

9 (a) The department shall develop a plan for a comprehensive system of adult protective
10 services including social case work, medical and psychiatric services, home care, day care,
11 counseling, research and others to achieve the goals of this article.

12 (b) It shall offer such services as are available and appropriate in the circumstances to persons
13 who, other than for compensation, have or intend to have the actual, physical custody and control
14 of an incapacitated adult and to incapacitated adults or to adults who may request and be entitled to
15 the protective services: *Provided*, That except as expressly provided in this article, the department
16 may not directly or indirectly compel the acceptance of the services by any person or discriminate
17 against a person who refuses the services.

18 **§9-7-8. Confidentiality of records.**

19 (a) Except as otherwise provided in this section, all records of the department, state and
20 regional long-term care ombudsmen, nursing home or facility administrators, the office of health
21 facility licensure and certification and all protective services agencies concerning an adult or facility

1 resident under this article are confidential and may not be released, except in accordance with the
2 provisions of section eleven of this article.

3 (b) Unless the adult concerned is receiving adult protective services or unless there are
4 pending proceedings with regard to the adult, the records maintained by the adult protective services
5 agency shall be destroyed thirty years following their preparation.

6 (c) Notwithstanding the provisions of subsection (a) of this section or any other provision of
7 this code to the contrary, all records concerning reports of abuse, neglect or exploitation of
8 vulnerable adults, including all records generated as a result of such reports, may be made available
9 to:

10 (1) Employees or agents of the department who need access to the records for official
11 business;

12 (2) Any law-enforcement agency investigating a report of known or suspected abuse, neglect
13 or exploitation of a vulnerable adult;

14 (3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or
15 in which the alleged abuse, neglect or exploitation occurred;

16 (4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court
17 shall, before permitting use of the records in connection with any court proceeding, review the
18 records for relevancy and materiality to the issues in the proceeding. The court may issue an order
19 to limit the examination and use of the records or any part of the record;

20 (5) A grand jury, by subpoena, upon its determination that access to the records is necessary
21 in the conduct of its official business;

1 (6) The recognized protection and advocacy agency for the disabled of the State of West
2 Virginia;

3 (7) The victim; and

4 (8) The victim's legal representative, unless he or she is the subject of an investigation under
5 this article.

6 (d) Notwithstanding the provisions of subsection (a) of this section or any other provision
7 of this code to the contrary, summaries concerning substantiated investigative reports of abuse,
8 neglect or exploitation of adults may be made available to:

9 (1) Any person who the department has determined to have abused, neglected or exploited
10 the victim;

11 (2) Any appropriate official of the state or regional long-term care ombudsman investigating
12 a report of known or suspected abuse, neglect or exploitation of a vulnerable adult;

13 (3) Any person engaged in bona fide research or auditing, as defined by the department.
14 However, information identifying the subjects of the report may not be made available to the
15 researcher;

16 (4) Employees or agents of an agency of another state that has jurisdiction to investigate
17 known or suspected abuse, neglect or exploitation of vulnerable adults;

18 (5) A professional person when the information is necessary for the diagnosis and treatment
19 of, and service delivery to, a vulnerable adult; and

20 (6) A department administrative hearing officer when the hearing officer determines the
21 information is necessary for the determination of an issue before the officer.

1 (e) The identity of any person reporting abuse, neglect or exploitation of a vulnerable adult
2 may not be released, without that person's written consent, to any person other than employees of
3 the department responsible for protective services or the appropriate prosecuting attorney or
4 law-enforcement agency. This subsection grants protection only for the person who reported the
5 abuse, neglect or exploitation and protects only the fact that the person is the reporter. This
6 subsection does not prohibit the subpoena of a person reporting the abuse, neglect or exploitation
7 when deemed necessary by the prosecuting attorney or the department to protect a vulnerable adult
8 who is the subject of a report, if the fact that the person made the report is not disclosed.

9 **§9-7-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.**

10 (a) If any medical, dental or mental health professional, Christian Science practitioner,
11 religious healer, social service worker, law-enforcement officer, humane officer, state or regional
12 ombudsman or any employee of any nursing home or other residential facility has reasonable cause
13 to believe that an incapacitated adult or facility resident is or has been neglected, abused or placed
14 in an emergency situation, or if the person observes an incapacitated adult or facility resident being
15 subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the
16 person shall immediately report the circumstances pursuant to the provisions of section eleven of this
17 article: *Provided*, That nothing in this article is intended to prevent individuals from reporting on
18 their own behalf.

19 (b) In addition to those persons and officials specifically required to report situations
20 involving suspected abuse or neglect of an incapacitated adult or facility resident or the existence
21 of an emergency situation, any other person may make such a report.

1 (c) The secretary shall develop a form for the filing of written complaints and provide these
2 forms to all nursing homes or other residential facilities, hospitals, ombudsmen and adult protective
3 service agencies in this state. The forms shall be designed to protect the identity of the complainant,
4 if desired, and to facilitate the prompt filing of complaints.

5 (d) The department shall develop and implement a procedure to notify any person mandated
6 to report suspected abuse and neglect of an incapacitated adult or facility resident of whether an
7 investigation into the reported suspected abuse or neglect has been initiated and when the
8 investigation is completed.

9 **§9-7-10. Mandatory reporting suspected of animal cruelty by adult protective service**
10 **workers.**

11 If an adult protective service worker, in response to a report mandated by section nine of this
12 article, forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, he
13 or she shall report the suspicion and the basis therefor to the county humane officer provided within
14 twenty-four hours of the response to the report.

15 **§9-7-11. Mandatory reporting to medical examiner or coroner; postmortem investigation.**

16 (a) Any person or official who is required under section nine of this article to report cases of
17 suspected abuse or neglect and who has probable cause to believe that an incapacitated adult or
18 facility resident has died as a result of abuse or neglect shall report that fact to the appropriate
19 medical examiner or coroner.

20 (b) Upon the receipt of such a report, the medical examiner or coroner shall cause an
21 investigation to be made and shall report the findings to the local law-enforcement agency, the local

1 prosecuting attorney, the department's local adult protective services agency, and, if the institution
2 making a report is a hospital, nursing home or other residential facility, to the administrator of the
3 facility, the state and regional long-term care ombudsman and the office of health facility licensure
4 and certification.

5 **§9-7-12. Reporting procedures.**

6 (a) A report of neglect or abuse of an incapacitated adult or facility resident or of an
7 emergency situation involving such an adult shall be made immediately by telephone to the
8 department's local adult protective services agency and shall be followed by a written report by the
9 complainant or the receiving agency within forty-eight hours. The department shall, upon receiving
10 any such report, take such action as may be appropriate and shall maintain a record thereof. The
11 department shall receive such telephonic reports on its twenty-four hour, seven-day-a-week, toll-free
12 number established to receive calls reporting cases of suspected or known adult abuse or neglect.

13 (b) A copy of any report of abuse, neglect or emergency situation shall be immediately filed
14 with the following agencies:

15 (1) The department;

16 (2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or

17 (3) In case of a death, to the appropriate medical examiner or coroner's office.

18 (c) If the person who is alleged to be abused or neglected is a resident of a nursing home or
19 other residential facility, a copy of the report shall also be filed with the state or regional ombudsman
20 and the administrator of the nursing home or facility.

21 (d) The department shall omit from such report in the first instance, the name of the person

1 making a report, when requested by such person.

2 (e) Reports of known or suspected institutional abuse or neglect of an incapacitated adult or
3 facility resident or the existence of an emergency situation in an institution, nursing home or other
4 residential facility shall be made, received and investigated in the same manner as other reports
5 provided in this article. In the case of a report regarding an institution, nursing home or residential
6 facility, the department shall immediately cause an investigation to be conducted.

7 (f) Upon receipt of a written complaint, the department shall coordinate an investigation.

8 **§9-7-13. Reporting person's immunity from liability.**

9 (a) Any person who in good faith makes or causes to be made any report permitted or
10 required by this article is immune from any civil or criminal liability which might otherwise arise
11 solely out of making the report.

12 (b) No nursing home may discharge or in any manner discriminate against any resident,
13 family member, legal representative or employee for the reason that he or she filed a complaint or
14 participated in any matter or proceeding stemming from the provisions of this article.

15 (c) Violation of the prohibition contained in subsection (b) of this section by a nursing home
16 or other residential facility constitutes grounds for the suspension or revocation of the license of the
17 facility, if it operates under license pursuant to this code, or other appropriate measure.

18 **§9-7-14. Abrogation of privileged communications.**

19 The privileged status of communications between husband and wife, and with any person
20 required to make reports, except communications between an attorney and his or her client, is
21 abrogated in circumstances involving suspected or known abuse or neglect of an incapacitated adult

1 or where the incapacitated adult is in a known or suspected emergency situation.

2 **§9-7-15. Failure to report; penalty.**

3 Any person subject to the mandatory reporting provisions of this article who knowingly fails
4 to make any required report or any person who knowingly prevents another person from making a
5 report is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100
6 or imprisoned in a regional jail for not more than ten days, or both fined and imprisoned.

7 **§9-7-16. Compelling production of information.**

8 (a)(1) In order to obtain information regarding the location of an adult who is the subject of
9 an allegation of abuse or neglect, the secretary may serve, by certified mail, personal service or
10 facsimile, an administrative subpoena on any corporation, partnership, business or organization for
11 production of information leading to determining the location of the adult. In case of disobedience
12 to the subpoena, adult protective services may petition any circuit court to require the production of
13 information.

14 (2) In case of disobedience to the subpoena, in compelling the production of information the
15 secretary may invoke the aid of:

16 (A) The circuit court with jurisdiction over the served party, if the entity served is located in
17 this state; or

18 (B) The circuit court of the county in which the local protective services office conducting
19 the investigation is located, if the entity served is a nonresident.

20 (3) A circuit court may not enforce an administrative subpoena unless it finds that:

21 (A) The investigation is one the division of adult protective services is authorized to make

- 1 and is being conducted pursuant to a legitimate purpose;
- 2 (B) The inquiry is relevant to that purpose;
- 3 (C) The inquiry is not too broad or indefinite;
- 4 (D) The information sought is not already in the possession of the division of adult protective
5 services; and
- 6 (E) Any administrative steps required by law have been followed.
- 7 (4) If circumstances arise where the secretary, or his or her designee, determines it necessary
8 to compel an individual to provide information regarding the location of an adult who is the subject
9 of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from
10 the circuit court with jurisdiction over the individual from whom the information is sought.

NOTE: The purpose of this bill is to revise, arrange, consolidate and recodify the laws of the State of West Virginia relating to the Department of Health and Human Resources and the Bureau of Medical Services.

The entire chapter is substantially rewritten; therefore strike-throughs and underscoring have been omitted.