

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 597

BY SENATORS FERNS AND PLYMALE

[Originating in the Committee on Health and Human

Resource; reported on February 17, 2016.]

1 A BILL to amend and reenact §5F-1-3a of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §6-7-2a of said code; to amend and reenact §9-4C-7 of said code; to amend
3 and reenact §11-27-9 and §11-27-11 of said code; to amend and reenact §16-5F-2, §16-
4 5F-3, §16-5F-4, §16-5F-5 and §16-5F-6 of said code; to amend and reenact §16-29B-3,
5 §16-29B-5, §16-29B-6, §16-29B-7, §16-29B-8, §16-29B-9, §16-29B-11, §16-29B-12, §16-
6 29B-13, §16-29B-14, §16-29B-15, §16-29B-17, §16-29B-18, §16-29B-19a, §16-29B-22,
7 §16-29B-23, §16-29B-24, §16-29B-25 and §16-29B-26 of said code; to amend said code
8 by adding thereto two new sections, designated §16-29B-5a and §16-29B-28; to amend
9 said code by adding thereto a new section, designated §16-29B-28; to amend and reenact
10 §16-29G-2, §16-29G-5 and §16-29G-6 of said code; and to amend and reenact §16-29I-
11 4 of said code, all relating generally to the Health Care Authority; employment of the
12 members of the Board of the West Virginia Health Care Authority; providing authority to
13 set salaries for board members; creating the position of Executive Director of the Health
14 Care Authority; making the executive director the administrative head of the Health Care
15 Authority; setting forth the qualifications of the executive director; providing the executive
16 director is appointed by the Governor with advice and consent of the Senate; providing
17 the executive director reports to the Secretary of the Department of Health and Human
18 Resources; placing the Health Care Authority under the Department of Health and Human
19 Resources; adding the executive director to the Public Employees Insurance Agency
20 Advisory Board; clarifying where the administrative duties of the Health Care Authority are
21 to be carried out; clarifying that the Board of Directors of the Health Care Authority is the
22 adjudicatory arm of the Health Care Authority; requiring that the members of the board of
23 directors be employed on a part-time basis; setting forth other employment requirements
24 for the board of directors; expanding the board of directors from three to five members;
25 setting forth qualifications for appointment to the board of directors; providing that the
26 board of directors shall report to the executive director; establishing compensation for the

27 board of directors; setting forth minimum hearing requirements before the board of
28 directors; providing for recommended decisions by the board of directors to the executive
29 director; setting forth executive director procedure for review and approval of
30 recommended decisions of the board of directors; providing for remand of a decision;
31 clarifying that the executive director has all rule-setting powers; providing for a study by
32 the Health Care Authority of concerns of hospitals in border counties; requiring a
33 comprehensive study of the certificate of need program, including possible elimination of
34 certificate of need; making technical corrections; granting authority to the Health Care
35 Authority to review proposed cooperative agreements; defining terms; setting out
36 legislative findings and purpose; allowing cooperative agreements between hospitals and
37 health care providers; setting forth goals of a cooperative agreement; establishing a review
38 process for cooperative agreements; setting forth standards for review of cooperative
39 agreements; granting enforcement powers over cooperative agreements to the Health
40 Care Authority; providing for rulemaking; requiring reporting to the Health Care Authority;
41 setting out what must be included in a report; allowing the Health Care Authority to render
42 a decision regarding reduced competition when a cooperative agreement pertains to an
43 acquisition, merger or combination of hospitals or health care providers; and updating
44 code references.

Be it enacted by the Legislature of West Virginia:

1 That §5F-1-3a of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §6-7-2a of said code be amended and reenacted; that §9-4C-7 of said code be
3 amended and reenacted; that §11-27-9 and §11-27-11 of said code be amended and reenacted;
4 that §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5 and §16-5F-6 of said code be amended and
5 reenacted; that §16-29B-3, §16-29B-5, §16-29B-6, §16-29B-7, §16-29B-8, §16-29B-9, §16-29B-
6 11, §16-29B-12, §16-29B-13, §16-29B-14, §16-29B-15, §16-29B-17, §16-29B-18, §16-29B-19a,
7 §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25 and §16-29B-26 of said code be amended

8 and reenacted; that said code be amended by adding thereto a new section, designated §16-
9 29B-5a; that said code be amended by adding thereto a new section, designated §16-29B-28;
10 that §16-29G-2, §16-29G-5 and §16-29G-6 of said code be amended and reenacted; and that
11 §16-29I-4 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF
STATE GOVERNMENT.**

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3a. Executive compensation commission.

1 There is hereby created an executive compensation commission composed of three
2 members, one of whom shall be the secretary of administration, one of whom shall be appointed
3 by the Governor from the names of two or more nominees submitted by the President of the
4 Senate, and one of whom shall be appointed by the Governor from the names of two or more
5 nominees submitted by the Speaker of the House of Delegates. The names of such nominees
6 shall be submitted to the Governor by not later than June 1, 2000, and the appointment of such
7 members shall be made by the Governor by not later than July 1, 2000. The members appointed
8 by the Governor shall have had significant business management experience at the time of their
9 appointment and shall serve without compensation other than reimbursement for their reasonable
10 expenses necessarily incurred in the performance of their commission duties. For the 2001
11 regular session of the Legislature and every four years thereafter, the commission shall review
12 the compensation for cabinet secretaries and other appointed officers of this state, including, but
13 not limited to, the following: Commissioner, Division of Highways; commissioner, Bureau of
14 Employment Programs; director, Division of Environmental Protection; commissioner, Bureau of
15 Senior Services; director of tourism; commissioner, division of tax; administrator, division of
16 health; commissioner, Division of Corrections; director, Division of Natural Resources;
17 superintendent, State Police; administrator, Lottery Division; director, Public Employees

18 Insurance Agency; administrator, Alcohol Beverage Control Commission; commissioner, Division
19 of Motor Vehicles; director, Division of Personnel; Adjutant General; ~~chairman, Health Care~~
20 ~~Authority; members, Health Care Authority;~~ the Executive Director of the Health Care Authority;
21 director, Division of Rehabilitation Services; executive director, Educational Broadcasting
22 Authority; executive secretary, Library Commission; Chairman and members of the Public Service
23 Commission; Director of Emergency Services; administrator, Division of Human Services;
24 executive director, Human Rights Commission; director, Division of Veterans Affairs; director,
25 Office of Miner's Health Safety and Training; commissioner, Division of Banking; commissioner,
26 Division of Insurance; commissioner, Division of Culture and History; commissioner, Division of
27 Labor; director, Prosecuting Attorneys Institute; director, Board of Risk and Insurance
28 Management; commissioner, Oil and Gas Conservation Commission; director, Geological and
29 Economic Survey; executive director, Water Development Authority; executive director, Public
30 Defender Services; director, State Rail Authority; Chairman and members of the Parole Board;
31 members, Employment Security Review Board; members, Workers' Compensation Appeal
32 Board; chairman, Racing Commission; executive director, Women's Commission; and director,
33 Hospital Finance Authority.

34 Following this review, but not later than the twenty-first day of such regular session, the
35 commission shall submit an executive compensation report to the Legislature to include specific
36 recommendations for adjusting the compensation for the officers described in this section. The
37 recommendation may be in the form of a bill to be introduced in each house to amend this section
38 to incorporate the recommended adjustments.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

**§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers
and salaries of officers.**

1 (a) Each of the following appointive state officers named in this subsection shall be
2 appointed by the Governor, by and with the advice and consent of the Senate. Each of the
3 appointive state officers serves at the will and pleasure of the Governor for the term for which the
4 Governor was elected and until the respective state officers' successors have been appointed
5 and qualified. Each of the appointive state officers are subject to the existing qualifications for
6 holding each respective office and each has and is hereby granted all of the powers and authority
7 and shall perform all of the functions and services heretofore vested in and performed by virtue
8 of existing law respecting each office.

9 The annual salary of each named appointive state officer is as follows:

10 Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections,
11 \$80,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police,
12 \$85,000; Commissioner, Division of Banking, \$75,000; Commissioner, Division of Culture and
13 History, \$65,000; Commissioner, Alcohol Beverage Control Commission, \$75,000;
14 Commissioner, Division of Motor Vehicles, \$75,000; ~~Chairman, Health Care Authority, \$80,000;~~
15 ~~members, Health Care Authority, \$70,000;~~ Director, Human Rights Commission, \$55,000;
16 Commissioner, Division of Labor, \$70,000; prior to July 1, 2011, Director, Division of Veterans
17 Affairs, \$65,000; Chairperson, Board of Parole, \$55,000; members, Board of Parole, \$50,000;
18 members, Employment Security Review Board, \$17,000; and Commissioner, Workforce West
19 Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows: Health
20 and Human Resources, \$95,000: *Provided*, That effective July 1, 2013, the Secretary of the
21 Department of Health and Human Resources shall be paid an annual salary not to exceed
22 \$175,000; Transportation, \$95,000: *Provided, however*, That if the same person is serving as both
23 the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid
24 \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration,
25 \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000;
26 and Environmental Protection, \$95,000: *Provided further*, That any officer specified in this

27 subsection whose salary is increased by more than \$5,000 as a result of the amendment and
28 reenactment of this section during the 2011 regular session of the Legislature shall be paid the
29 salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum
30 salary provided in this subsection.

31 (b) Each of the state officers named in this subsection shall continue to be appointed in
32 the manner prescribed in this code and shall be paid an annual salary as follows:

33 Director, Board of Risk and Insurance Management, \$80,000; Director, Division of
34 Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director,
35 Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director,
36 Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute,
37 \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of
38 Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital
39 Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service
40 Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of
41 Forestry, \$75,000; Director, Division of Juvenile Services, \$80,000; and Executive Director,
42 Regional Jail and Correctional Facility Authority, \$80,000.

43 (c) Each of the following appointive state officers named in this subsection shall be
44 appointed by the Governor, by and with the advice and consent of the Senate. Each of the
45 appointive state officers serves at the will and pleasure of the Governor for the term for which the
46 Governor was elected and until the respective state officers' successors have been appointed
47 and qualified. Each of the appointive state officers are subject to the existing qualifications for
48 holding each respective office and each has and is hereby granted all of the powers and authority
49 and shall perform all of the functions and services heretofore vested in and performed by virtue
50 of existing law respecting each office.

51 The annual salary of each named appointive state officer shall be as follows:

52 Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director,

53 Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency
54 Management, \$65,000; and Adjutant General, \$125,000.

55 (d) No increase in the salary of any appointive state officer pursuant to this section may
56 be paid until and unless the appointive state officer has first filed with the State Auditor and the
57 Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General,
58 certifying that his or her spending unit is in compliance with any general law providing for a salary
59 increase for his or her employees. The Attorney General shall prepare and distribute the form to
60 the affected spending units.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4C-7. Powers and duties.

1 (a) Each board created pursuant to this article shall:
2 (1) Develop, recommend and review reimbursement methodology where applicable, and
3 develop and recommend a reasonable provider fee schedule, in relation to its respective provider
4 groups, so that the schedule conforms with federal Medicaid laws and remains within the limits of
5 annual funding available to the single state agency for the Medicaid program. In developing the
6 fee schedule the board may refer to a nationally published regional specific fee schedule, if
7 available, as selected by the secretary in accordance with section eight of this article. The board
8 may consider identified health care priorities in developing its fee schedule to the extent permitted
9 by applicable federal Medicaid laws, and may recommend higher reimbursement rates for basic
10 primary and preventative health care services than for other services. In identifying basic primary
11 and preventative health care services, the board may consider factors, including, but not limited
12 to, services defined and prioritized by the basic services task force of the health care planning
13 commission in its report issued in December of the year 1992; and minimum benefits and
14 coverages for policies of insurance as set forth in section fifteen, article fifteen, chapter thirty-three

15 of this code and section four, article sixteen-c of said chapter and rules of the Insurance
16 Commissioner promulgated thereunder. If the single state agency approves the adjustments to
17 the fee schedule, it shall implement the provider fee schedule;

18 (2) Review its respective provider fee schedule on a quarterly basis and recommend to
19 the single state agency any adjustments it considers necessary. If the single state agency
20 approves any of the board's recommendations, it shall immediately implement those adjustments
21 and shall report the same to the Joint Committee on Government and Finance on a quarterly
22 basis;

23 (3) Assist and enhance communications between participating providers and the
24 Department of Health and Human Resources;

25 (4) Meet and confer with representatives from each specialty area within its respective
26 provider group so that equity in reimbursement increases or decreases may be achieved to the
27 greatest extent possible and when appropriate to meet and confer with other provider boards; and

28 (5) Appoint a chairperson to preside over all official transactions of the board.

29 (b) Each board may carry out any other powers and duties as prescribed to it by the
30 secretary.

31 (c) Nothing in this section gives any board the authority to interfere with the discretion and
32 judgment given to the single state agency that administers the state's Medicaid program. If the
33 single state agency disapproves the recommendations or adjustments to the fee schedule, it is
34 expressly authorized to make any modifications to fee schedules as are necessary to ensure that
35 total financial requirements of the agency for the current fiscal year with respect to the state's
36 Medicaid plan are met and shall report such modifications to the Joint Committee on Government
37 and Finance on a quarterly basis. The purpose of each board is to assist and enhance the role of
38 the single state agency in carrying out its mandate by acting as a means of communication
39 between the health care provider community and the agency.

40 ~~(d) In addition to the duties specified in subsection (a) of this section, the ambulance~~

41 ~~service provider Medicaid board shall work with the health care cost review authority to develop~~
42 ~~a method for regulating rates charged by ambulance services. The health care cost review~~
43 ~~authority shall report its findings to the Legislature by January 1, 1994. The costs of the report~~
44 ~~shall be paid by the health care cost review authority. In this capacity only, the chairperson of the~~
45 ~~health care cost review authority shall serve as an ex officio, nonvoting member of the board.~~

46 (e)(d) On a quarterly basis, the single state agency and the board shall report the status
47 of the fund, any adjustments to the fee schedule and the fee schedule for each health care
48 provider identified in section two of this article to the Joint Committee on Government and
49 Finance.

CHAPTER 11. TAXATION.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-9. Imposition of tax on providers of inpatient hospital services.

1 (a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the
2 business of providing inpatient hospital services, there is hereby levied and shall be collected
3 from every person rendering such service an annual broad-based health care related tax:
4 *Provided, That a hospital which meets all the requirements of section twenty-one, article twenty-*
5 *nine-b, chapter sixteen of this code and regulations thereunder may change or amend its*
6 *schedule of rates to the extent necessary to compensate for the tax in accordance with the*
7 *following procedures:*

8 (1) ~~The health care cost review authority shall allow a temporary change in a hospital's~~
9 ~~rates which may be effective immediately upon filing and in advance of review procedures when~~
10 ~~a hospital files a verified claim that such temporary rate changes are in the public interest, and~~
11 ~~are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to~~
12 ~~relieve undue financial hardship. The verified claim shall state the facts supporting the hospital's~~
13 ~~position, the amount of increase in rates required to alleviate the situation and shall summarize~~

14 ~~the overall effect of the rate increase. The claim shall be verified by either the chairman of the~~
15 ~~hospital's governing body or by the chief executive officer of the hospital.~~

16 ~~(2) Following receipt of the verified claim for temporary relief, the health care cost review~~
17 ~~authority shall review the claim through its usual procedures and standards; however, this power~~
18 ~~of review does not affect the hospital's ability to place the temporary rate increase into effect~~
19 ~~immediately. The review of the hospital's claim shall be for a permanent rate increase and the~~
20 ~~health care cost review authority may include such other factual information in the review as may~~
21 ~~be necessary for a permanent rate increase review. As a result of its findings from the permanent~~
22 ~~review, the health care cost review authority may allow the temporary rate increase to become~~
23 ~~permanent, to deny any increase at all, to allow a lesser increase, or to allow a greater increase.~~

24 ~~(3) When any change affecting an increase in rates goes into effect before a final order is~~
25 ~~entered in the proceedings, for whatever reasons, where it deems it necessary and practicable,~~
26 ~~the health care cost review authority may order the hospital to keep a detailed and accurate~~
27 ~~account of all amounts received by reason of the increase in rates and the purchasers and third-~~
28 ~~party payors from whom such amounts were received. At the conclusion of any hearing, appeal~~
29 ~~or other proceeding, the health care cost review authority may order the hospital to refund with~~
30 ~~interest to each affected purchaser and/or third-party payor any part of the increase in rates that~~
31 ~~may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital~~
32 ~~shall, under appropriate terms and conditions determined by the health care cost review authority,~~
33 ~~charge over and amortize by means of a temporary decrease in rates whatever income is realized~~
34 ~~from that portion of the increase in rates which was subsequently held to be excessive or~~
35 ~~unreasonable.~~

36 ~~(4) The health care cost review authority, upon a determination that a hospital has~~
37 ~~overcharged purchasers or charged purchasers at rates not approved by the health care cost~~
38 ~~review authority or charged rates which were subsequently held to be excessive or unreasonable,~~
39 ~~may prescribe rebates to purchasers and third-party payors in effect by the aggregate total of the~~

40 ~~overcharge.~~

41 ~~(5)~~ the rate adjustment provided for in this section is limited to a single adjustment during
42 the initial year of the imposition of the tax provided for in this section.

43 (b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be
44 two and one-half percent of the gross receipts derived by the taxpayer from furnishing inpatient
45 hospital services in this state.

46 (c) *Definitions.* —

47 (1) “Gross receipts” means the amount received or receivable, whether in cash or in kind,
48 from patients, third-party payors and others for inpatient hospital services furnished by the
49 provider, including retroactive adjustments under reimbursement agreements with third-party
50 payors, without any deduction for any expenses of any kind: *Provided*, That accrual basis
51 providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent
52 such allowances are included therein, and by bad debts, to the extent the amount of such bad
53 debts was previously included in gross receipts upon which the tax imposed by this section was
54 paid.

55 (2) “Contractual allowances” means the difference between revenue (gross receipts) at
56 established rates and amounts realizable from third-party payors under contractual agreements.

57 (3) “Inpatient hospital services” means those services that are inpatient hospital services
58 for purposes of Section 1903(w) of the Social Security Act.

59 (d) *Effective date.* — The tax imposed by this section shall apply to gross receipts received
60 or receivable by providers after May 31, 1993.

**§11-27-11. Imposition of tax on providers of nursing facility services, other than services
of intermediate care facilities for individuals with an intellectual disability.**

1 (a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the
2 business of providing nursing facility services, other than those services of intermediate care
3 facilities for individuals with an intellectual disability, there is levied and shall be collected from

4 every person rendering such service an annual broad-based health care-related tax: *Provided,*
5 That hospitals which provide nursing facility services may adjust nursing facility rates to the extent
6 necessary to compensate for the tax: ~~without first obtaining approval from the Health Care~~
7 ~~Authority~~ *Provided, however,* That the rate adjustment is limited to a single adjustment during the
8 initial year of the imposition of the tax ~~which adjustment is exempt from prospective review by the~~
9 ~~Health Care Authority~~ and further which is limited to an amount not to exceed the amount of the
10 tax which is levied against the hospital for the provision of nursing facility services pursuant to this
11 section. ~~The Health Care Authority shall retroactively review the rate increases implemented by~~
12 ~~the hospitals under this section during the regular rate review process. A hospital which fails to~~
13 ~~meet the criteria established by this section for a rate increase exempt from prospective review is~~
14 ~~subject to the penalties imposed under article twenty-nine b, chapter sixteen of the code.~~

15 (b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five
16 and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility
17 services in this state, other than services of intermediate care facilities for individuals with an
18 intellectual disability. This rate shall be increased to five and seventy-two one hundredths percent
19 of the gross receipts received or receivable by providers of nursing facility services on and after
20 October 1, 2015, and shall again be decreased to five and one-half percent of the gross receipts
21 received or receivable by providers of nursing services after June 30, 2016.

22 (c) *Definitions.* —

23 (1) "Gross receipts" means the amount received or receivable, whether in cash or in kind,
24 from patients, third-party payors and others for nursing facility services furnished by the provider,
25 including retroactive adjustments under reimbursement agreements with third-party payors,
26 without any deduction for any expenses of any kind: *Provided,* That accrual basis providers are
27 allowed to reduce gross receipts by their bad debts, to the extent the amount of those bad debts
28 was previously included in gross receipts upon which the tax imposed by this section was paid.

29 (2) "Nursing facility services" means those services that are nursing facility services for

30 purposes of §1903(w) of the Social Security Act.

31 (d) *Effective date.* — The tax imposed by this section applies to gross receipts received
32 or receivable by providers after May 31, 1993.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-2. Definitions.

1 As used in this article:

2 (1) “Annual report” means an annual financial report for the covered facility’s or related
3 organization’s fiscal year prepared by an accountant or the covered facility’s or related
4 organization’s auditor.

5 (2) ~~“Board”~~ “Authority” means the West Virginia Health Care Authority.

6 (3) “Covered facility” means any hospital, skilled nursing facility, kidney disease treatment
7 center, including a free-standing hemodialysis unit; intermediate care facility; ambulatory health
8 care facility; ambulatory surgical facility; home health agency; hospice agency; rehabilitation
9 facility; health maintenance organization; or community mental health or intellectual disability
10 facility, whether under public or private ownership or as a profit or nonprofit organization and
11 whether or not licensed or required to be licensed, in whole or in part, by the state: *Provided,*
12 That nonprofit, community-based primary care centers providing primary care services without
13 regard to ability to pay which provide the ~~board~~ authority with a year-end audited financial
14 statement prepared in accordance with generally accepted auditing standards and with
15 governmental auditing standards issued by the Comptroller General of the United States shall be
16 deemed to have complied with the disclosure requirements of this section.

17 (4) “Related organization” means an organization, whether publicly owned, nonprofit, tax-
18 exempt or for profit, related to a covered facility through common membership, governing bodies,
19 trustees, officers, stock ownership, family members, partners or limited partners, including, but

20 not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes
21 of this subdivision “family members” shall mean brothers and sisters whether by the whole or half
22 blood, spouse, ancestors and lineal descendants.

23 (5) “Rates” means all rates, fees or charges imposed by any covered facility for health
24 care services.

25 (6) “Records” includes accounts, books, charts, contracts, documents, files, maps, papers,
26 profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or
27 stored.

**§16-5F-3. General powers and duties of the ~~board~~ authority regarding reporting and
review.**

1 (a) In addition to the powers granted to the ~~board~~ authority elsewhere in this article, the
2 ~~board~~ authority shall have the powers as indicated by this section and it shall be its duty to:

3 (1) Promulgate legislative rules and ~~regulations~~ in accordance with the provisions of article
4 three, chapter twenty-nine-a of this code, to implement and make effective the powers, duties and
5 responsibilities contained in the provisions of this article.

6 (2) Require the filing of fiscal information by covered facilities and related organizations
7 relating to any matter affecting the cost of health care services in this state.

8 (3) Exercise, subject to the limitations and restrictions herein imposed, all other powers
9 which are reasonably necessary or essential to carry out the expressed purposes of this article.

10 (4) Require the filing of copies of all tax returns required by federal and state law to be
11 filed by covered facilities and related organizations.

12 (b) The ~~board~~ authority shall also investigate and recommend to the Legislature whether
13 other health care providers should be made subject to the provisions of this article.

14 (c) The ~~board~~ authority shall, not later than December 31 of each year, prepare and
15 transmit to the Governor and to the clerks of both houses of the Legislature a report containing
16 the material and data as required by section four of this article, based upon the most recent data
17 available.

18 ~~The board shall, no later than July 1, 1992, prepare and transmit to the Governor and to~~
19 ~~the clerks of both houses of the Legislature a special report containing the material and data~~
20 ~~collected on related organizations. The report shall further explain the effect of the financial~~
21 ~~activities of the related organizations as represented by the collected data and its relationship to~~
22 ~~the rate setting powers of the board specified in section nineteen, article twenty-nine-b of this~~
23 ~~chapter~~

§16-5F-4. Reports required to be published and filed; form of reports; right of inspection.

1 (a) Every covered facility and related organization defined in this article, within one
2 hundred twenty days after the end of each of their fiscal years, unless an extension be granted
3 by the ~~board~~ authority for good cause shown, shall be required to file with the ~~board~~ authority and
4 publish, as a Class I legal advertisement, pursuant to section two, article three, chapter fifty-nine
5 of this code, in a qualified newspaper published within the county within which such covered
6 facility or related organization is located, an annual report prepared by the covered facility's or
7 related organization's auditor or an independent accountant.

8 Such report shall contain a complete statement of the following:

- 9 (1) Assets and liabilities;
- 10 (2) Income and expenses;
- 11 (3) Profit or loss for the period reported;
- 12 (4) A statement of ownership for persons owning more than five percent of the capital
13 stock outstanding and the dividends paid thereon, if any, and to whom paid for the period reported
14 unless the covered facility or related organization be duly registered on the New York Stock
15 Exchange, American Stock Exchange, any regional stock exchange, or its stock traded actively
16 over the counter. Such statement shall further contain a disclosure of ownership by any parent
17 company or subsidiary, if applicable.

18 Such annual report shall also include a prominent notice that the details concerning the
19 contents of the advertisement, together with the other reports, statements and schedules required
20 to be filed with the ~~board~~ authority by the provisions of this section, shall be available for public

21 inspection and copying at the ~~board's~~ authority's office.

22 (b) Every covered facility and related organization shall also file with the ~~board~~ authority
23 the following statements, schedules or reports in such form and at such intervals as may be
24 specified by the ~~board~~ authority, but at least annually:

25 (1) A statement of services available and services rendered;

26 (2) A statement of the total financial needs of such covered facility or related organization
27 and the resources available or expected to become available to meet such needs;

28 (3) A complete schedule of such covered facility's or related organization's then current
29 rates with costs allocated to each category of costs, in accordance with the rules ~~and regulations~~
30 as promulgated by the ~~board~~ authority pursuant to section three hereof;

31 (4) A copy of such reports made or filed with the federal health care financing
32 administration, or its successor, as the ~~board~~ authority may deem necessary or useful to
33 accomplish the purposes of this article;

34 (5) A statement of all charges, fees or salaries for goods or services rendered to the
35 covered facility or related organization for the period reported which shall exceed in total the sum
36 of \$55,000 and a statement of all charges, fees or other sums collected by the covered facility or
37 related organization for or on the account of any person, firm, partnership, corporation or other
38 entity, however structured, which shall exceed in total the sum of \$55,000 during the period
39 reported;

40 (6) Such other reports of the costs incurred in rendering services as the ~~board~~ authority
41 may prescribe. The ~~board~~ authority may require the certification of specified financial reports by
42 the covered facility's or related organization's auditor or independent accountant; and

43 (7) A copy of all tax returns required to be filed by federal and state law.

44 (c) Notwithstanding any provision to the contrary herein, any data or material that is
45 furnished to the ~~board~~ authority pursuant to the provisions of subdivision (4), subsection (b) of
46 this section need not be duplicated by any other requirements of this section requiring the filing
47 of data and material.

48 (d) No report, statement, schedule or other filing required or permitted to be filed hereunder
49 shall contain any medical or individual information personally identifiable to a patient or a
50 consumer of health services, whether directly or indirectly. All such reports, statements and
51 schedules filed with the ~~board~~ authority under this section shall be open to public inspection and
52 shall be available for examination during regular hours. Copies of such reports shall be made
53 available to the public upon request and the ~~board~~ authority may establish fees reasonably
54 calculated to reimburse the ~~board~~ authority for its actual costs in making copies of such reports:
55 *Provided*, That all tax returns filed pursuant to this article shall be confidential and it shall be
56 unlawful for the ~~board~~ authority or any member of its staff to divulge or make known in any manner
57 the tax return, or any part thereof, of any covered facility or related organization.

58 (e) Whenever further fiscal information is deemed necessary to verify the accuracy of any
59 information set forth in any statement, schedule or report filed by a covered facility or related
60 organization under the provisions of this article, the ~~board~~ authority shall have the authority to
61 require the production of any records necessary to verify such information.

62 (f) From time to time, the ~~board~~ authority shall engage in or carry out analyses and studies
63 relating to health care costs, the financial status of any covered facility or related organization or
64 any other appropriate related matters, and make determinations of whether, in its opinion, the
65 rates charged by a covered facility are economically justified.

§16-5F-5. Injunctions.

1 Whenever it appears that any covered facility or related organization, required to file or
2 publish such reports, as provided in this article, has failed to file or publish such reports, the
3 Attorney General, upon the request of the ~~board~~ authority, may apply in the name of the state to,
4 and the circuit court of the county in which such covered facility or related organization is located
5 shall have jurisdiction for the granting of a mandatory injunction to compel compliance with the
6 provisions of this article.

**§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to Supreme Court
of Appeals.**

1 Every covered facility and related organization failing to make and transmit to the ~~board~~
2 authority any of the reports required by law or failing to publish or distribute the reports as so
3 required, shall forthwith be notified by the ~~board~~ authority and, if such failure continues for ten
4 days after receipt of said notice, such delinquent facility or organization shall be subject to a
5 penalty of \$1,000 for each day thereafter that such failure continues, such penalty to be recovered
6 by the ~~board~~ authority through the Attorney General in a civil action and paid into the State
7 Treasury to the account of the General Fund. Review of any final judgment or order of the circuit
8 court shall be by appeal to the West Virginia Supreme Court of Appeals.

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-3. Definitions.

1 Definitions of words and terms defined in articles two-d and five-f of this chapter are
2 incorporated in this section unless this section has different definitions.

3 As used in this article, unless a different meaning clearly appears from the context:

4 (a) "Authority" means the Health Care Authority created pursuant to the provisions of this
5 article, a division within the State Department of Health and Human Resources;

6 (b) "Board" means the five-member board of directors of the West Virginia Health Care
7 Authority;

8 ~~(a)~~(c) "Charges" means the economic value established for accounting purposes of the
9 goods and services a hospital provides for all classes of purchasers;

10 ~~(b)~~(d) "Class of purchaser" means a group of potential hospital patients with common
11 characteristics affecting the way in which their hospital care is financed. Examples of classes of
12 purchasers are Medicare beneficiaries, welfare recipients, subscribers of corporations
13 established and operated pursuant to article twenty-four, chapter thirty-three of this code,
14 members of health maintenance organizations and other groups as defined by the ~~board~~ authority

15 ~~(c) "Board" means the three-member board of directors of the West Virginia Health Care Authority,~~
16 ~~an autonomous division within the State Department of Health and Human Resources;~~

17 (e) “Executive director” or “director” means the executive director who is the administrative
18 head of the Health Care Authority as set forth in section five-a of this article;

19 ~~(d)~~(f) “Health care provider” means a person, partnership, corporation, facility, hospital or
20 institution licensed, certified or authorized by law to provide professional health care service in
21 this state to an individual during this individual’s medical, remedial, or behavioral health care,
22 treatment or confinement. For purposes of this article, health care provider shall not include the
23 private office practice of one or more health care professionals licensed to practice in this state
24 pursuant to the provisions of chapter thirty of this code;

25 ~~(e)~~(g) “Hospital” means a facility subject to licensure as such under the provisions of article
26 five-b of this chapter, and any acute care facility operated by the state government which is
27 primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic
28 and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick
29 persons, and does not include state mental health facilities or state long-term care facilities;

30 ~~(f)~~(h) “Person” means an individual, trust, estate, partnership, committee, corporation,
31 association or other organization such as a joint stock company, a state or political subdivision or
32 instrumentality thereof or any legal entity recognized by the state;

33 ~~(g)~~(i) “Purchaser” means a consumer of patient care services, a natural person who is
34 directly or indirectly responsible for payment for such patient care services rendered by a health
35 care provider, but does not include third-party payers;

36 ~~(h)~~(j) “Rates” means all value given or money payable to health care providers for health
37 care services, including fees, charges and cost reimbursements;

38 ~~(i)~~(k) “Records” means accounts, books and other data related to health care costs at
39 health care facilities subject to the provisions of this article which do not include privileged medical
40 information, individual personal data, confidential information, the disclosure of which is prohibited
41 by other provisions of this code and the laws enacted by the federal government, and information,
42 the disclosure of which would be an invasion of privacy;

43 (l) “Related organization” means an organization, whether publicly owned, nonprofit, tax-

44 exempt or for profit, related to a health care provider through common membership, governing
45 bodies, trustees, officers, stock ownership, family members, partners or limited partners including,
46 but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the
47 purposes of this subsection, family members shall mean brothers and sisters, whether by the
48 whole or half blood, spouse, ancestors and lineal descendants; and

49 (j)(m) "Third-party payor" means any natural person, person, corporation or government
50 entity responsible for payment for patient care services rendered by health care providers.

51 (k) ~~"Related organization" means an organization, whether publicly owned, nonprofit, tax-~~
52 ~~exempt or for profit, related to a health care provider through common membership, governing~~
53 ~~bodies, trustees, officers, stock ownership, family members, partners or limited partners including,~~
54 ~~but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the~~
55 ~~purposes of this subsection family members shall mean brothers and sisters, whether by the~~
56 ~~whole or half blood, spouse, ancestors and lineal descendants.~~

**§16-29B-5. West Virginia Health Care Authority; composition of the board; qualifications;
terms; oath; expenses of members; vacancies; appointment of chairman; and
meetings of the board.**

1 ~~The "West Virginia Health Care Cost Review Authority" is continued as an autonomous~~
2 ~~division of the Department of Health and Human Resources and shall be known as The West~~
3 ~~Virginia Health Care Authority is continued and reassigned as a division of the Department of~~
4 ~~Health and Human Resources and is hereinafter referred to as the "~~board~~" "authority". The Board~~
5 ~~of Directors of the West Virginia Health Care Authority shall hereinafter be referred to as the~~
6 ~~"board". Any references in this code to the West Virginia Health Care Cost Review Authority~~
7 ~~means the West Virginia Health Care Authority.~~

8 (a) The board shall consist of ~~three~~ five members, appointed by the Governor, with the
9 advice and consent of the Senate. The members of the board shall be employed on a part-time
10 basis. The board members shall not be permitted to hold political office in the government of the
11 state either by election or appointment while serving as a member of the board. The board

12 members shall not be eligible for civil service coverage as provided in section four, article six,
13 chapter twenty-nine of this code. The board members shall be citizens and residents of this state.
14 No more than ~~two~~ three of the board members may be members of the same political party. One
15 board member shall have a background in health care finance or economics, one board member
16 shall have previous employment experience in human services, business administration or
17 substantially related fields, one board member shall have previous experience in the
18 administration of a health care facility, one board member shall have previous experience as a
19 provider of health care services, and one board member shall be a consumer of health services
20 with a demonstrated interest in health care issues.

21 (b) Each board member shall, before entering upon the duties of his or her office, take and
22 subscribe to the oath provided by section five, article IV of the Constitution of the State of West
23 Virginia, which oath shall be filed in the office of the Secretary of State. ~~The Governor shall~~
24 ~~designate one of the board members to serve as chairman at the Governor's will and pleasure.~~
25 ~~The chairman shall be the chief administrative officer of the board~~

26 (c) The Governor may remove any board member only for incompetency, neglect of duty,
27 gross immorality, malfeasance in office or violation of the provisions of this article. Appointments
28 are for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired
29 term only.

30 ~~(e)~~(d) No person while in the employ of, or holding any official relation to, any hospital or
31 health care provider subject to the provisions of this article, or who has any pecuniary interest in
32 any hospital or health care provider, may serve as a member of the board or as an employee of
33 the board. Nor may any board member be a candidate for or hold public office or be a member of
34 any political committee while acting as a board member; nor may any board member or employee
35 of the board receive anything of value, either directly or indirectly, from any third-party payor or
36 health care provider. If any of the board members become a candidate for any public office or for
37 membership on any political committee, the Governor shall remove the board member from the
38 board and shall appoint a new board member to fill the vacancy created. No board member or

39 former board member may accept employment with any hospital or health care provider subject
40 to the jurisdiction of the board in violation of the West Virginia Governmental Ethics Act, chapter
41 six-b of this code: *Provided*, That the act shall not apply to employment accepted after termination
42 of the board.

43 ~~(d)~~(e) The concurrent judgment of ~~two~~ three of the board members when in session as the
44 board shall be considered the action of the board. A vacancy in the board shall not affect the right
45 or duty of the remaining board members to function as a board.

46 (f) The board is under the direct supervision of the executive director. The executive
47 director shall serve as the ex officio, non-voting chair of the board. The board shall serve as the
48 adjudicatory body of the authority and shall conduct all hearings as required in this article, article
49 two-d of this chapter and any other hearing as required by this code or any legislative or
50 procedural rule of the authority. The executive director shall act as hearing examiner for all
51 hearings before the board.

52 (g) The board shall advise the executive director created in section five-a of this article on
53 matters relative to the administration of the authority. This shall include contracting authority,
54 staffing, rulemaking and data collection and interpretation.

55 (h) Board members are entitled to receive from the authority's funds compensation as set
56 by the executive director for his or her service. Board members shall also be reimbursed from
57 the authority's funds for sums necessary to carry out its responsibilities and for reasonable travel
58 expenses to attend meetings.

§16-29B-5a. Executive Director of the Health Care Authority; powers and duties.

1 (a) The Governor, with advice and consent of the Senate, shall appoint an individual as
2 Executive Director of the Health Care Authority. This person shall oversee the daily operation of
3 the Health Care Authority. This person shall be qualified by training and experience to direct the
4 operations of the Health Care Authority. The executive director is ineligible for civil service
5 coverage as provided in section four, article six, chapter twenty-nine of this code and serves at
6 the will and pleasure of the Governor.

7 (b) The executive director shall:

8 (1) Serve on a full-time basis and may not be engaged in any other profession or
9 occupation;

10 (2) Not hold political office in the government of the state either by election or appointment
11 while serving as executive director;

12 (3) Shall be a citizen of the United States and shall become a citizen of the state within
13 ninety days of appointment;

14 (4) Shall be paid a salary as set by the Governor;

15 (5) Report to the Secretary of the Department of Health and Human Resources; and

16 (6) Before entering upon the duties of his or her office, take and subscribe to the oath
17 provided by section five, article IV of the Constitution of the State of West Virginia, which oath
18 shall be filed in the office of the Secretary of State.

19 (c) The executive director has other powers and duties as set forth in this article.

§16-29B-6. Information gathering and coordination; data advisory group.

1 (a) The executive director, with advice from the board, shall: Coordinate and oversee the
2 health data collection of state agencies; lead state agencies' efforts to make the best use of
3 emerging technology to effect the expedient and appropriate exchange of health care information
4 and data, including patient records and reports; and coordinate database development, analysis
5 and reporting to facilitate cost management, utilization review and quality assurance efforts by
6 state payor and regulatory agencies, insurers, consumers, providers and other interested parties.
7 Agencies of the state collecting health data shall work together through the ~~board~~ executive
8 director to develop an integrated system for the efficient collection, responsible use and
9 dissemination of such data and to facilitate and support the development of statewide health
10 information systems that will allow for the electronic transmittal of all health information and claims
11 processing activities of state agencies within the state and that will coordinate the development
12 and use of electronic health information systems within state government. The executive director,
13 with advice from the board, shall establish minimum requirements and issue reports relating to

14 information systems of all state health programs, including simplifying and standardizing forms,
15 establishing information standards and reports for capitated managed care programs to be
16 managed by the ~~Insurance Commission~~ Office of the Insurance Commissioner and shall develop
17 a comprehensive system to collect ambulatory health care data. The ~~board~~ executive director or
18 his or her designee is authorized to gain access to any health-related database in state
19 government for the purposes of fulfilling ~~its~~ his or her duties: *Provided*, That, for any database to
20 which the ~~board~~ executive director gains access, the use and dissemination of information from
21 the database shall be subject to the confidentiality provisions applicable to such database.

22 (b) To advise the executive director and the board in its efforts under this section, the
23 ~~board~~ executive director or his or her designee shall create a data advisory group. ~~and appoint~~
24 ~~one of the board's members as chair of the group~~ The executive director or his or her designee
25 shall be the chair of the group. The group shall be composed of representatives of consumers,
26 businesses, providers, payors and state agencies. At least one of the members shall represent
27 the interest of hospitals which are regulated by the Health Care Authority. The data advisory group
28 shall assist the executive director and the board in developing priorities and protocols for data
29 collection and the development and reform of health information systems provided under this
30 section.

31 (c) The ~~board's~~ staff of the Health Care Authority shall gather information on cost
32 containment efforts, including, but not limited to, the provision of alternative delivery systems,
33 prospective payment systems, alternative rate-making methods, and programs of consumer
34 education. The ~~board~~ authority shall pay particular attention to the economic, quality of care and
35 health status impact of such efforts on purchasers or classes of purchasers, particularly the elderly
36 and those on low or fixed incomes.

37 (d) The ~~board~~ authority staff shall further gather information on state-of-the-art advances
38 in medical technology, the cost effectiveness of such advances and their impact on advances in
39 health care services and management practices, and any other state-of-the-art concepts relating
40 to health care cost containment, health care improvement or other issues the ~~board~~ authority finds

41 relevant and directs staff to investigate. The ~~board~~ authority staff shall prepare and keep a register
42 of such information and update it on an annual basis.

43 (e) The data advisory group members shall be reimbursed from the ~~board~~ authority's funds
44 for sums necessary to carry out its responsibilities and for reasonable travel expenses to attend
45 meetings.

§16-29B-7. Staff.

1 (a) The executive director with advice from the board may employ such persons as may
2 be necessary to effect the provisions of this article. The executive director with advice from the
3 board shall set the respective salaries or compensations of all staff. Any person employed by the
4 ~~board~~ Health Care Authority, other than on a part-time basis, shall devote full time to the
5 performance of his or her duties as such employee during the regular working hours of the ~~board~~
6 authority.

7 (b) The ~~board~~ executive director shall appoint general counsel who shall act as legal
8 counsel to the executive director and the board. The general counsel shall serve at the will and
9 pleasure of the ~~board~~ executive director and is not eligible for civil service coverage as provided
10 in section four, article six, chapter twenty-nine of this code.

11 (1) The general counsel may act to bring and to defend actions on behalf of the authority,
12 the executive director and the board in the courts of the state and in federal courts.

13 (2) In all adjudicative matters before the board, the general counsel shall advise present
14 the matter before the board and offer legal and administrative advice to the board. The staff shall
15 represent itself in all such actions before the board.

16 (c) The ~~board~~ executive director may contract with third parties, including state agencies,
17 for any services that may be necessary to perform the duties imposed upon ~~it~~ him or her by this
18 article where such contractual agreements will promote economy, avoid duplication of effort or
19 make the best use of available expertise.

20 (d) The executive director, with advice from the board, shall identify which members of the
21 staff of the health care ~~cost-review~~ authority shall be exempted from the salary schedules or pay

22 plan adopted by the state personnel board, and further identify such staff members by job
23 classification or designation, together with the salary or salary ranges for each such job
24 classification or designation. This information shall be filed by the ~~board~~ executive director or his
25 or her designee with the Director of the Division of Personnel no later than July 1, 1991, and
26 ~~thereafter as necessary annually.~~

§16-29B-8. Powers generally; budget expenses of the executive director and the board.

1 (a) In addition to the powers granted to the ~~board~~ executive director elsewhere in this
2 article, the executive director, with advice from the board, may:

3 (1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines, and
4 legislative rules promulgated in accordance with article three, chapter twenty-nine-a of this code
5 and any procedural rules of the authority: *Provided,* That subsequent amendments and
6 modifications to any legislative rule promulgated pursuant to this article and not exempt from the
7 provisions of article three, chapter twenty-nine-a of this code may be implemented by emergency
8 rule;

9 (2) Hold public hearings, conduct investigations and require the filing of information
10 relating to matters affecting the costs of health care services subject to the provisions of this article
11 and may subpoena witnesses, papers, records, documents and all other data in connection
12 therewith. The board, who serves as the adjudicatory arm of the authority, may administer oaths
13 or affirmations in any hearing or investigation;

14 (3) Apply for, receive and accept gifts, payments and other funds and advances from the
15 United States, the state or any other governmental body, agency or agencies or from any other
16 private or public corporation or person, with the exception of hospitals subject to the provisions of
17 this article, or associations representing them, doing business in the State of West Virginia, except
18 in accordance with subsection (c) of this section, and enter into agreements with respect thereto,
19 including the undertaking of studies, plans, demonstrations or projects. Any such gifts or
20 payments that may be received or any such agreements that may be entered into shall be used
21 or formulated only so as to pursue legitimate, lawful purposes of the ~~board~~ authority, and shall in

22 no respect inure to the private benefit of the executive director, a board member, staff member,
23 donor or contracting party;

24 (4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell,
25 encumber and assign rights or dispose of any property, real or personal, consistent with the
26 objectives of the ~~board~~ authority as set forth in this article: *Provided*, That such acquisition or
27 purchase of real property or construction of facilities shall be consistent with planning by the state
28 building commissioner and subject to the approval of the Legislature;

29 (5) Contract and be contracted with and execute all instruments necessary or convenient
30 in carrying out the ~~board's~~ authority's functions and duties; and

31 (6) Exercise, subject to limitations or restrictions herein imposed, all other powers which
32 are reasonably necessary or essential to effect the express objectives and purposes of this article.

33 (b) The executive director, with advice from the board, shall annually prepare a budget for
34 the next fiscal year for submission to the Governor and the Legislature which shall include all
35 sums necessary to support the activities of the executive director, board and ~~its staff~~ staff of the
36 authority.

37 (c) Each hospital subject to the provisions of this article shall be assessed by the executive
38 director, with the advice of the board, on a pro rata basis using the net patient revenue, as defined
39 under generally accepted accounting principles, of each hospital as reported under the authority
40 of section eighteen of this article as the measure of the hospital's obligation. The amount of such
41 fee shall be determined by the executive director, with the advice of the board, except that in no
42 case shall the hospital's obligation exceed one tenth of one percent of its net patient revenue.
43 Such fees shall be paid on or before July 1 in each year and shall be paid into the State Treasury
44 and kept as a special revolving fund designated "Health Care Cost Review Fund", with the moneys
45 in such fund being expendable after appropriation by the Legislature for purposes consistent with
46 this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the
47 treasury, but shall remain in said fund and such moneys shall be expendable after appropriation
48 by the Legislature in ensuing fiscal years.

49 (d) Each hospital's assessment shall be treated as an allowable expense by the ~~board~~
50 authority.

51 (e) The ~~board~~ authority is empowered to withhold ~~rate approvals~~, certificates of need and
52 rural health system loans and grants if any such fees remain unpaid, unless exempted under
53 subsection (g), section four, article two-d of this chapter.

§16-29B-9. Annual report.

1 The ~~board~~ executive director shall, within thirty days of the close of the fiscal year, or from
2 time to time as requested by the Legislature, prepare and transmit to the Governor and the
3 Legislative Oversight Commission on Health and Human Resources Accountability a report of its
4 operations and activities for the preceding fiscal year. This report shall include summaries of all
5 reports made by the hospitals subject to this article, together with facts, suggestions and policy
6 recommendations the ~~board~~ authority considers necessary. ~~The board shall, after rate review and~~
7 ~~determination in accordance with the provisions of this article, include such rate schedules in its~~
8 ~~annual report or other reports as may be requested by the Legislature.~~

§16-29B-11. Related programs.

1 In addition to carrying out its duties under this article, the ~~board~~ authority shall carry out
2 its information disclosure functions set forth in article five-f of this chapter and its functions set
3 forth in article two-d of this chapter, including health planning, issuing grants and loans to
4 financially vulnerable health care entities located in underserved areas, and the review and
5 approval or disapproval of capital expenditures for health care facilities or services. In making
6 decisions in the certificate of need review process, the ~~board~~ authority shall be guided by the state
7 health plan approved by the Governor.

**§16-29B-12. Hearings; administrative procedures act applicable; hearings examiner;
subpoenas.**

1 (a) The ~~board~~ Health Care Authority may conduct such hearings as it deems necessary
2 for the performance of its functions and shall hold hearings when required by the provisions of
3 this chapter or upon a written demand therefor by a person aggrieved by any act or failure to act

4 by the ~~board~~ Health Care Authority or by any legislative or procedural rule ~~regulation~~ or order of
5 the ~~board~~ Health Care Authority. All hearings of the ~~board~~ Health Care Authority shall be
6 announced in a timely manner and shall be open to the public except as may be necessary to
7 conduct business of an executive nature. All hearings shall be conducted by the board of directors
8 who shall serve as the adjudicatory arm of the Health Care Authority. The executive director shall
9 serve as the hearing examiner and shall preside over all hearings before the board.

10 (b) All pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to
11 and govern the hearing and administrative procedures in connection with and following the
12 hearing except as specifically stated to the contrary in this article. The executive director shall
13 assure that all hearings are to be conducted in a professional and respectful manner. The
14 executive director, board members and all other participants involved in the hearing shall be
15 courteous to those persons who appear before them and shall carefully examine all evidence and
16 information presented. The general counsel for the authority shall represent the interest of the
17 authority at all hearings. No board member or the executive director may participate in a decision
18 unless he or she has heard all of the information presented during the course of the hearing. If
19 necessary, recesses in the hearing may be called. Decisions of the board shall be issued by the
20 executive director as the hearing examiner for all hearings before the board pursuant to the
21 provisions of this article.

22 (c) Any hearing may be conducted by ~~members of the board or by a hearing examiner~~
23 ~~appointed for such purpose~~ the executive director or his or her designee. ~~Any member of the~~
24 ~~board~~ The executive director may issue subpoenas and subpoenas duces tecum which shall be
25 issued and served pursuant to the time, fee and enforcement specifications in section one, article
26 five, chapter twenty-nine-a of this code.

27 (d) Notwithstanding any other provision of state law, when a hospital alleges that a factual
28 determination made by the board or the executive director is incorrect, the burden of proof shall
29 be on the hospital to demonstrate that such determination is, in light of the total record, not
30 supported by substantial evidence. The burden of proof remains with the hospital in all cases.

31 (e) After any hearing, after due deliberation, and in consideration of all the testimony, the
32 evidence and the total record made, the board as the adjudicatory arm of the authority shall render
33 a recommended decision in writing to the executive director. The recommended written decision
34 shall be accompanied by findings of fact and conclusions of law as specified in section three,
35 article five, chapter twenty-nine-a of this code, and forwarded to the executive director within thirty
36 days of the hearing. The executive director shall approve the recommended decision as final
37 within thirty days of receipt unless he or she finds a factual or legal error in the decision's findings
38 or conclusions. If the executive director feels that there is insufficient information upon which to
39 base the decision, he or she may remand the decision to the board for further consideration. The
40 executive director may not consider any additional information in making the decision final that
41 was not presented to the board during the course of the hearing. Once the executive director
42 approves the decision as final the copy of the decision and accompanying findings and
43 conclusions shall be served by certified mail, return receipt requested, upon the party demanding
44 the hearing, and upon its attorney of record, if any.

45 (f) Any interested individual, group or organization shall be recognized as affected parties
46 upon written request from the individual, group or organization. Affected parties shall have the
47 right to bring relevant evidence before the ~~board~~ authority and testify thereon. Affected parties
48 shall have equal access to records, testimony and evidence before the ~~board~~ authority, and shall
49 have equal access to the expertise of the ~~board's~~ authority's staff. The executive director with
50 advice from the board shall have authority to develop legislative rules ~~and regulations~~ to
51 administer provisions of this section.

52 (g) The decision of the board and executive director is final unless reversed, vacated or
53 modified upon judicial review thereof, in accordance with the provisions of section thirteen of this
54 article.

§16-29B-13. Review of final orders of board.

1 (a) A final decision of the ~~board~~ executive director and the record upon which it was made
2 shall, upon request of any affected party, be reviewed by the agency of the state designated by

3 the Governor to hear appeals under the provisions of article two-d of this chapter. To be effective,
4 such request must be received within thirty days after the date upon which all parties received
5 notice of the ~~board~~ executive director's final decision, and the hearing shall commence within
6 thirty days of receipt of the request.

7 (b) For the purpose of administrative review of ~~board~~ executive director decisions, the
8 review agency shall conduct its proceedings in conformance with the West Virginia Rules of Civil
9 Procedure for Trial Courts of Record and the local rules for use in the civil courts of Kanawha
10 County and shall review appeals in accordance with the provisions governing the judicial review
11 of contested administrative cases in section four, article five, chapter twenty-nine-a of this code,
12 notwithstanding the exceptions of section five, article five, chapter twenty-nine-a of this code.

13 (c) The decision of the review agency shall be made in writing within forty-five days after
14 the conclusion of such hearing.

15 (d) The written findings of the review agency shall be sent to all affected parties, and shall
16 be made available by the commission to others upon request.

17 (e) The decision of the review agency shall be considered the final decision of the ~~board~~
18 authority; however, the review agency may remand the matter to the ~~board~~ authority for further
19 action or consideration.

20 (f) Upon the entry of a final decision by the review agency, any affected party may within
21 thirty days after the date upon which all affected parties receive notice of the decision of the review
22 agency, appeal said decision in the circuit court of Kanawha County. The decision of the review
23 agency shall be reviewed by that circuit court in accordance with the provisions for the judicial
24 review of administrative decisions contained in section four, article five, chapter twenty-nine-a of
25 this code.

§16-29B-14. Injunction; mandamus.

1 The ~~board~~ executive director may compel obedience to its lawful orders by injunction or
2 mandamus or other proper proceedings in the name of the state in any circuit court having
3 jurisdiction of the parties or of the subject matter, or the Supreme Court of Appeals direct, and

4 such proceeding shall be determined in an expeditious manner.

§16-29B-15. Refusal to comply.

1 (a) Whenever a hospital fails or refuses to furnish to the executive director or the board
2 any records or information requested under the provisions of this article or otherwise fails or
3 refuses to comply with the requirements of this article or any reasonable legislative or procedural
4 ~~rule and regulation~~ promulgated by the ~~board~~ authority under the provisions of this article, the
5 board as the adjudicatory arm of the authority may make and enter an order of enforcement and
6 serve a copy thereof on the hospital in question by certified mail, return receipt requested.

7 (b) The hospital shall be granted a hearing on the order of enforcement if, within twenty
8 days after receipt of a copy thereof, it files with the ~~board~~ authority a written demand for hearing.
9 A demand for hearing shall operate automatically to stay or suspend the execution of the order of
10 enforcement, with the exception of orders relating to rate increases.

11 (c) Upon receipt of a written demand for a hearing, the ~~board~~ authority shall set a time and
12 place therefor, not less than ten and no more than thirty days thereafter. Any scheduled hearing
13 may be continued by the ~~board~~ authority upon motion for good cause shown by the hospital
14 demanding the hearing.

§16-29B-17. Uniform system of financial reporting.

1 (a) The executive director with advice of the board shall develop and specify a uniform
2 system of reporting utilization, accounting and financial reporting, including cost allocation
3 methods by which hospitals shall record their revenues, income, expenses, capital outlays,
4 assets, liabilities and units of service. The development and specification process aforementioned
5 shall be conducted in a manner determined by the executive director, with advice of the board, to
6 be most efficient for that purpose notwithstanding the provisions of chapter twenty-nine-a of this
7 code. Each hospital shall adopt this uniform system for the purpose of reporting utilization, costs
8 and revenues to the ~~board~~ authority effective for the fiscal year beginning on or after twelve
9 months from the effective date of this article.

10 (b) The ~~board~~ authority may provide for modification in the accounting and reporting

11 system in order to correctly reflect differences in the scope or type of services and financial
12 structures of the various categories, sizes and types of hospitals and in a manner consistent with
13 the purposes of this article.

14 (c) The ~~board~~ authority may provide technical assistance to those hospitals which request
15 it and which evidence sufficient need for assistance in the establishment of a data collection
16 system to the extent that funds are available to the ~~board~~ authority for this purpose.

17 (d) The ~~board~~ authority shall, after consultation with health care providers, purchasers,
18 classes of purchasers and third-party payors, adopt a mandatory form for reporting to the ~~board~~
19 authority, at its request, medical diagnosis, treatment and other services rendered to each
20 purchaser by health care providers subject to the provisions of this article.

21 (e) Following a public hearing, the ~~board~~ authority shall establish a program to minimize
22 the administrative burden on hospitals by eliminating unnecessary duplication of financial and
23 operational reports; and to the extent possible, notwithstanding any other law, coordinate reviews,
24 reports and inspections performed by federal, state, local and private agencies.

§16-29B-18. Annual reporting.

1 (a) It shall be the duty of every health care provider which comes under the jurisdiction of
2 this article and article five-f of this chapter to file with the ~~board~~ authority the reports required by
3 such article five-f and the following financial statements or reports in a form and at intervals
4 specified by the ~~board~~ authority, but at least annually:

5 (1) A balance sheet detailing the assets, liabilities and net worth of the hospital for its
6 preceding fiscal year;

7 (2) A statement of income and expenses for the preceding fiscal year;

8 (3) A statement of services rendered and services available; and

9 (4) Such other reports as the ~~board~~ authority may prescribe.

10 Where more than one licensed hospital is operated by the reporting organization, the
11 information required by this section shall be reported for each hospital separately.

12 (b) It shall be the duty of every related organization to file with the ~~board~~ authority, within
13 thirty days from the effective date of this section, the following financial statements or reports for
14 each of its three prior fiscal years:

15 (1) A balance sheet detailing the assets, liabilities and net worth of the related
16 organization;

17 (2) A statement of income and expenses;

18 (3) A statement of cash flows; and

19 (4) Such other information as the ~~board~~ authority may prescribe.

20 After the initial filing of the financial information required by this subsection, every related
21 organization shall thereafter file annual financial reports with the ~~board~~ authority in a form
22 specified by the ~~board~~ authority.

23 (c) The annual financial statements filed pursuant to this section shall be prepared in
24 accordance with the system of accounting and reporting adopted under section seventeen of this
25 article. The ~~board~~ authority may require attestations from responsible officials of the hospitals or
26 related organizations that such reports have to the best of their knowledge been prepared
27 truthfully and in accordance with the prescribed system of accounting and reporting.

28 (d) All reports filed under any provisions of this article, except personal medical information
29 personally identifiable to a purchaser and any tax return, shall be open to public inspection and
30 shall be available for examination at the offices of the ~~board~~ authority during regular business
31 hours.

32 (e) Whenever a further investigation is deemed necessary or desirable to verify the
33 accuracy of any information set forth in any statement, schedule or report filed by a health care
34 provider or related organization under the provisions of this section, the ~~board~~ authority may
35 require a full or partial audit of the records of the health care provider or related organization.

§16-29B-19a. Additional legislative directives; studies, findings and recommendations.

1 (a) The Legislature finds and declares that changing market forces require periodic
2 changes in the regulatory structure for health care providers and hereby directs the ~~board~~

3 executive director or his or her designee to study the following:

4 (1) The certificate of need program, including the effect of any changes on managed care
5 and access for uninsured and rural consumers; determining which services or capital
6 expenditures should be exempt and why; ~~and the status of similar programs in other states; is~~
7 there a means to accommodate concerns of health care providers and hospitals situate in West
8 Virginia which border states that do not have a certificate of need programs; and whether there
9 exists a benefit to discontinuing the certificate of need program in its entirety. The results of the
10 study should be presented to the Legislative Oversight Commission on Health and Human
11 Resources Accountability by December 1, 2016;

12 ~~(2) The hospital rate-setting methodology, including the need for hospital rate-setting and~~
13 ~~the development of alternatives to the cost-based reimbursement methodology;~~

14 ~~(3)~~ (2) Managed care markets, including the need for regulatory programs in managed
15 care markets; and

16 ~~(4)~~ (3) Barriers or obstacles, if any, presented by the certificate of need program or
17 standards in the state health plan to health care providers' need to reduce excess capacity,
18 restructure services and integrate the delivery of services.

19 (b) The executive director may consult with the board and may form task forces to assist
20 it in addressing these issues. ~~and it~~ The executive director or his or her designee shall prepare a
21 report on ~~its~~ his or her findings and recommendations, which is to be filed with the Governor, the
22 President of the Senate and the Speaker of the House of Delegates on or before ~~the first day of~~
23 ~~October, one thousand nine hundred ninety-eight~~ December 1, 2016, identifying each problem
24 and recommendation with specificity and the effect of each recommendation on cost, access and
25 quality of care. The task forces, if formed, shall be composed of representatives of consumers,
26 businesses, providers, payors and state agencies.

27 (c) The ~~board~~ executive director shall report quarterly to the Legislative Oversight
28 Commission on Health and Human Resources Accountability regarding the appointment,
29 direction and progress of the studies.

16-29B-22. Incentives.

1 The ~~board~~ authority shall be required to allow, as an incentive to the efficient management
2 and operation of hospitals covered by this article, that if said hospitals are more efficient than
3 anticipated, they shall retain a portion of the resulting savings and if less efficient shall bear the
4 resulting deficits.

§16-29B-23. Utilization review and quality assurance; quality assurance advisory group.

1 (a) In order to avoid unnecessary or inappropriate utilization of health care services and
2 to ensure high quality health care, the ~~board~~ authority shall establish a utilization review and
3 quality assurance program. The ~~board~~ authority shall coordinate this program with utilization
4 review and peer review programs presently established in state agencies, hospital services and
5 health service corporations, hospitals or other organizations.

6 (b) With the assistance of the above-mentioned entities, and after public hearings, the
7 ~~board~~ authority shall develop a plan for the review, on a sampling basis, of the necessity of
8 admissions, length of stay and quality of care rendered at said hospitals.

9 (c) The ~~board~~ authority shall monitor identified problem areas and shall impose such
10 sanctions and provide such incentives as necessary to ensure high quality and appropriate
11 services and utilization in hospitals under the jurisdiction of this article.

12 (d) To assist the ~~board~~ authority in its efforts under this section, the ~~board~~ executive
13 director shall create a quality assurance advisory group and appoint one of the board's members
14 as chairman of the group. The group shall be composed of representatives of consumers,
15 providers, payors and regulating agencies.

§16-29B-24. Powers with respect to insurance policies and health organizations.

1 (a) With respect to any policy of accident or health insurance, including, but not limited to,
2 those insurance policies covered by articles fifteen, sixteen and sixteen-a, chapter thirty-three of
3 this code, and with respect to any health service, care or maintenance organization, or similar
4 health-related organizations, including, but not limited to, those covered by articles twenty-four,
5 twenty-five and twenty-five-a, chapter thirty-three of this code, the ~~board~~ authority shall:

6 (1) Be considered for all purposes a directly affected party before the Insurance
7 Commissioner for purposes of any application, hearing or appeal on insurance matters;

8 (2) Review requests for, and make comments on, proposed rate increases or coverage
9 decreases submitted to the Insurance Commissioner with respect to the reasonableness of the
10 request and impact on health care cost containment;

11 (3) Comment on the advisability, reasonableness and impact on health care cost
12 containment of any other matter coming before the Insurance Commissioner or any other
13 governmental agency or body.

14 (b) On or before the date of filing with the Insurance Commissioner of any rate, including
15 any proposed increase or decrease thereof, and any coverage matter, including any proposed
16 increase or decrease thereof, each company or organization, described in subsection (a) of this
17 section, shall notify the ~~board~~ authority of such filing, by copy thereof or notice form, as the ~~board~~
18 authority directs.

19 (c) Each company or organization, described in subsection (a) above, shall establish, in a
20 written report which shall be incorporated into each proposed rate application, that it has
21 thoroughly investigated and considered:

22 (1) The economic and social impact of any proposed rate increase, or coverage decrease,
23 on health care cost containment and upon health care purchasers, including classes of
24 purchasers, such as the elderly and low and fixed income persons;

25 (2) State-of-the-art advances in insurance and health care management and rate design
26 as alternatives to or in mitigation of any rate increase, or coverage decrease, which report shall
27 describe the state-of-the-art advances considered and shall contain specific findings as to each
28 consideration, including the reasons for adoption or rejection of each;

29 (3) Implementation of cost control systems, including a combination of education,
30 persuasion, financial incentives and disincentives to control costs;

31 (4) Initiatives to create alternative delivery systems; and

32 (5) Efforts to encourage health care providers to control costs, including the elimination of

33 unnecessary or duplicative facilities and services, promotion of alternative forms of care, and
34 other cost control mechanisms.

§16-29B-25. Public disclosure.

1 From time to time, the ~~board~~ authority shall engage in or carry out analyses and studies
2 relating to health care costs, the financial status of any health care provider subject to the
3 provisions of this article or any other appropriate related matters, and it shall be empowered to
4 publish and disseminate any information which would be useful to members of the general public
5 in making informed choices about health care providers.

§16-29B-26. Exemptions from ~~state~~ antitrust laws.

1 Actions of the ~~board~~ authority shall be exempt from antitrust action ~~as provided in section~~
2 ~~five, article eighteen, chapter forty-seven of this code~~ under state and federal antitrust laws. Any
3 actions of hospitals and health care providers under the ~~board's~~ authority's jurisdiction, when
4 made in compliance with orders, directives, rules, approvals or regulations issued or promulgated
5 by the ~~board~~ authority, shall likewise be exempt. Health care providers shall be subject to the
6 antitrust guidelines of the federal trade commission and the department of justice.

§16-29B-28. Review of Cooperative agreements.

1 (a) Definitions. — As used in this section the following terms have the following meanings:

2 (1) "Academic medical center" means an accredited medical school, one or more faculty
3 practice plans affiliated with the medical school or one or more affiliated hospitals which meet the
4 requirements set forth in 42 C. F. R. 411.355(e)(2).

5 (2) "Cooperative agreement" means an agreement between a teaching hospital which is
6 a member of an academic medical center and one or more other hospitals or other health care
7 providers. The agreement shall provide for the sharing, allocation, consolidation by merger or
8 other combination of assets, or referral of patients, personnel, instructional programs, support
9 services and facilities or medical, diagnostic, or laboratory facilities or procedures or other
10 services traditionally offered by hospitals or other health care providers.

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11 (3) “Commercial health plan” means a plan offered by any third party payor that negotiates
12 with a party to a cooperative agreement with respect to patient care services rendered by health
13 care providers.

14 (4) “Health care provider” means the same as that term is defined in section three of this
15 article.

16 (5) “Teaching hospital” means a hospital or medical center that provides clinical education
17 and training to future and current health professionals.

18 (6) “Qualified hospital” means a teaching hospital, which meets the requirements of 42 C.
19 F. R. 411.355(e)(2)(iii) and which has entered into a cooperative agreement with one or more
20 hospitals or other health care providers but is not a critical access hospital for purposes of this
21 section.

22 (b) Findings. —

23 (1) The Legislature finds that the state’s schools of medicine, affiliated universities and
24 teaching hospitals are critically important in the training of physicians and other healthcare
25 providers who practice health care in this state. They provide access to healthcare and enhance
26 quality healthcare for the citizens of this state.

27 (2) A medical education is enhanced when medical students, residents and fellows have
28 access to modern facilities, state of the art equipment and a full range of clinical services and that,
29 in many instances, the accessibility to facilities, equipment and clinical services can be achieved
30 more economically and efficiently through a cooperative agreement among a teaching hospital
31 and one or more hospitals or other health care providers.

32 (c) Legislative purpose. — The Legislature encourages cooperative agreements if the
33 likely benefits of such agreements outweigh any disadvantages attributable to a reduction in
34 competition. When a cooperative agreement, and the planning and negotiations of cooperative
35 agreements, might be anticompetitive within the meaning and intent of state and federal antitrust

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36 laws the Legislature believes it is in the state's best interest to supplant competition with regulatory
37 oversight by the Health Care Authority as set out in this article. The authority has the power to
38 review, approve or deny cooperative agreements, ascertain that they are beneficial to citizens of
39 the state and to medical education, to ensure compliance with the provisions of the cooperative
40 agreements relative to the commitments made by the qualified hospital and conditions imposed
41 by the Health Care Authority.

42 (d) Cooperative Agreements. —

43 (1) A hospital which is a member of an academic medical center may negotiate and enter
44 into a cooperative agreement with other hospitals or health care providers in the state:

45 (A) In order to enhance or preserve medical education opportunities through collaborative
46 efforts and to ensure and maintain the economic viability of medical education in this state; and

47 (B) When the likely benefits outweigh any disadvantages attributable to a reduction in
48 competition that may result from the proposed cooperative agreement.

49 (2) The goal of any cooperative agreement would be to:

50 (A) Improve access to care;

51 (B) Advance health status;

52 (C) Target regional health issues;

53 (D) Promote technological advancement;

54 (E) Ensure accountability of the cost of care;

55 (F) Enhance academic engagement in regional health;

56 (G) Preserve and improve medical education opportunities;

57 (H) Strengthen the workforce for health-related careers; and

58 (I) Improve health entity collaboration and regional integration, where appropriate.

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59 (3) A qualified hospital located in this state may submit an application for approval of a
60 proposed cooperative agreement to the authority. The application shall state in detail the nature
61 of the proposed arrangement including the goals and methods for achieving:

62 (A) Population health improvement;

63 (B) Improved access to health care services;

64 (C) Improved quality;

65 (D) Cost efficiencies;

66 (E) Ensuring affordability of care;

67 (F) Enhancing and preserving medical education programs; and

68 (G) Supporting the authority's goals and strategic mission, as applicable.

69 (4) (A) If the cooperative agreement involves a combination of hospitals through merger,
70 consolidation or acquisition, the qualified hospital must have been awarded a certificate of need
71 for the project by the authority, as set forth in article two-d of this chapter prior to submitting an
72 application for review of a cooperative agreement. In addition to a certificate of need, the authority
73 may also require that an application for review of a cooperative agreement as provided in this
74 section be submitted and approved prior to the finalization of the cooperative agreement.

75 (B) If the cooperative agreement involves the merger, consolidation or acquisition by a
76 qualified hospital located within a distance of twenty-five highway miles of the main campus of
77 the qualified hospital, the authority shall determine if the combination is likely to produce anti-
78 competitive effects due to a reduction of competition.

79 (C) In reviewing a certificate of need application the authority shall give deference to the
80 policy statements of the Federal Trade Commission.

81 (D) If an application for a review of a cooperative agreement is not required by the
82 authority, the parties to the agreement may then complete the transaction following a final order
83 by the authority on the certificate of need as set forth in article two-d of this code. The qualified

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84 hospital may apply to the authority for approval of the cooperative agreement either before or
85 after the finalization of the cooperative agreement.

86 (E) A party who has received a certificate of need prior to the enactment of this provision
87 during the 2016 regular session of the Legislature may apply for approval of a cooperative
88 agreement whether or not the transaction contemplated thereby has been completed.

89 (F) The complete record in the certificate of need proceeding shall be part of the record
90 in the proceedings under this section and information submitted by an applicant in the certificate
91 of need proceeding need not be duplicated in proceedings under this section.

92 (e) Procedure for review of cooperative agreements. —

93 (1) Upon receipt of an application, the authority shall determine whether the application is
94 complete. If the authority determines the application is incomplete, it shall notify the applicant in
95 writing of additional items required to complete the application. A copy of the complete application
96 shall be provided by the parties to the Office of the Attorney General simultaneous with the
97 submission to the authority. If an applicant believes the materials submitted contain proprietary
98 information that is required to remain confidential, such information must be clearly identified and
99 the applicant shall submit duplicate applications, one with full information for the authority's use
100 and one redacted application available for release to the public.

101 (2) The authority shall upon receipt of a completed application, publish notification of the
102 application on its website. The public may submit written comments regarding the application
103 within ten days following publication. Following the close of the written comment period, the
104 authority shall, review the application as set forth in this section. Within thirty days of the receipt
105 of a complete application that authority may:

106 (i) Issue a certificate of approval which shall contain any conditions the authority finds
107 necessary for the approval;

108 (ii) Deny the application; or

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109 (iii) Order a public hearing if the authority finds it necessary to make an informed decision
110 on the application.

111 (3) The authority shall issue a written decision seventy-five days from receipt of the
112 completed application or at the conclusion of the public hearing, if one is held. The authority may
113 request additional information in which case they shall have an additional fifteen days following
114 receipt of the supplemental information to approve or deny the proposed cooperative agreement.

115 (4) Notice of any hearing shall be sent certified mailed to the applicants and all persons,
116 groups or organizations who have submitted written comments on the proposed cooperative
117 agreement. Any individual, group or organization who submitted written comments regarding the
118 application and wishes to present evidence at the public hearing shall request to be recognized
119 as an affected party as set forth in article two-d of this chapter. The hearing shall be held no later
120 than forty-five days after receipt of the application. The authority shall publish notice of the hearing
121 on the authority's website fifteen days prior to the hearing.

122 (5) Parties may file a motion for an expedited decision.

123 (f) Standards for review of cooperative agreements. —

124 (1) In its review of an application of a cooperative agreement submitted pursuant to this
125 section, the authority may consider the proposed cooperative agreement and any supporting
126 documents submitted by the applicant, any written comments submitted by any person and any
127 written or oral comments submitted, or evidence presented, at any public hearing.

128 (2) The authority shall approve a proposed cooperative agreement and issue a certificate
129 of approval if it determines that the benefits likely to result from the proposed cooperative
130 agreement outweigh the disadvantages likely to result from a reduction in competition from the
131 proposed cooperative agreement.

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132 (3) In evaluating the potential benefits of a proposed cooperative agreement, the authority
133 shall consider whether one or more of the following benefits may result from the proposed
134 cooperative agreement:

135 (A) Enhancement and preservation of existing academic and clinical educational
136 programs:

137 (B) Enhancement of the quality of hospital and hospital-related care, including mental
138 health services and treatment of substance abuse provided to citizens served by the authority;

139 (C) Enhancement of population health status consistent with the health goals established
140 by the authority;

141 (D) Preservation of hospital facilities in geographical proximity to the communities
142 traditionally served by those facilities to ensure access to care;

143 (E) Gains in the cost-efficiency of services provided by the hospitals involved;

144 (F) Improvements in the utilization of hospital resources and equipment;

145 (G) Avoidance of duplication of hospital resources;

146 (H) Participation in the state Medicaid program; and

147 (I) Constraints on increases in the total cost of care.

148 (4) The authority's evaluation of any disadvantages attributable to any reduction in
149 competition likely to result from the proposed cooperative agreement shall include, but need not
150 be limited to, the following factors:

151 (A) The extent of any likely adverse impact of the proposed cooperative agreement on the
152 ability of health maintenance organizations, preferred provider organizations, managed health
153 care organizations or other health care payors to negotiate reasonable payment and service
154 arrangements with hospitals, physicians, allied health care professionals or other health care
155 providers;

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156 (B) The extent of any reduction in competition among physicians, allied health
157 professionals, other health care providers or other persons furnishing goods or services to, or in
158 competition with, hospitals that is likely to result directly or indirectly from the proposed
159 cooperative agreement;

160 (C) The extent of any likely adverse impact on patients in the quality, availability and price
161 of health care services; and

162 (D) The availability of arrangements that are less restrictive to competition and achieve
163 the same benefits or a more favorable balance of benefits over disadvantages attributable to any
164 reduction in competition likely to result from the proposed cooperative agreement.

165 (5) (A) After a complete review of the record, including, but not limited to, the factors set
166 out in subsection (e) of this section, any commitments made by the applicant or applicants and
167 any conditions imposed by the authority that the benefits likely to result from the proposed
168 cooperative agreement outweigh the disadvantages likely to result from a reduction in competition
169 from the proposed cooperative agreement, the authority shall approve the proposed cooperative
170 agreement.

171 (B) The authority may reasonably condition approval upon the parties' commitments to:

172 (i) Achieving improvements in population health;

173 (ii) Access to health care services;

174 (iii) Quality and cost efficiencies identified by the parties in support of their application for
175 approval of the proposed cooperative agreement; and

176 (iv) Any additional commitments made by the parties to the cooperative agreement.

177 Any conditions set by the authority shall be fully enforceable by the authority. No condition
178 imposed by the authority, however, shall limit or interfere with the right of a hospital to adhere to
179 religious or ethical directives established by its governing board.

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180 (6) The authority's decision to approve or deny an application shall constitute a final order
181 or decision pursuant to the West Virginia Administrative Procedure Act (§ 29A-1-1, et seq.). The
182 authority may enforce commitments and conditions imposed by the authority in the circuit court
183 of Kanawha County or the circuit court where the principal place of business of a party to the
184 cooperative agreement is located.

185 (7) The authority may consult with the Attorney General of this state regarding his or her
186 assessment of whether or not to approve the proposed cooperative agreement.

187 (g) Enforcement and supervision of cooperative agreements. — The authority shall
188 enforce and supervise any approved cooperative agreement for compliance.

189 (1) The authority shall promulgate emergency rules pursuant to the provisions of section
190 fifteen, article three, chapter twenty-nine-a of this code to accomplish the goals of this section.
191 These rules shall include, at a minimum:

192 (A) An annual report by the parties to a cooperative agreement. This report is required to
193 include:

194 (i) Information about the extent of the benefits realized and compliance with other terms
195 and conditions of the approval;

196 (ii) A description of the activities conducted pursuant to the cooperative agreement,
197 including any actions taken in furtherance of commitments made by the parties or terms imposed
198 by the authority as a condition for approval of the cooperative agreement;

199 (iii) Information relating to price, cost, quality, access to care and population health
200 improvement;

201 (iv) Disclosure of any reimbursement contract between a party to a cooperative
202 agreement approved pursuant to this section and a commercial health plan or insurer entered into
203 subsequent to the finalization of the cooperative agreement. This shall include the amount, if any,
204 by which an increase in the average rate of reimbursement exceeds inpatient services for such

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205 year, the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient
206 services as published by the Bureau of Labor Statistics for such year and, with respect to
207 outpatient services, the increase in the Consumer Price Index for all Urban Consumers for
208 hospital outpatient services for such year; and

209 (v) Any additional information required by the authority ensure compliance with the
210 cooperative agreement.

211 (B) If an approved application involves the combination of hospitals, disclosure of the
212 performance of each hospital with respect to a representative sample of quality metrics selected
213 annually by the authority from the most recent quality metrics published by the Centers for
214 Medicare and Medicaid Services. The representative sample shall be published by the authority
215 on its website.

216 (C) A procedure for a corrective action plan where the average performance score of the
217 parties to the cooperative agreement in any calendar year is below the fiftieth percentile for all
218 United States hospitals with respect to the quality metrics as set forth in (B) of this subsection.

219 The corrective action plan is required to:

220 (i) Be submitted one hundred twenty days from the commencement of the next calendar
221 year; and

222 (ii) Provide for a rebate to each commercial health plan or insurer with which they have
223 contracted an amount not in excess of one percent of the amount paid to them by such
224 commercial health plan or insurer for hospital services during such two-year period if in any two
225 consecutive-year period the average performance score is below the fiftieth percentile for all
226 United States hospitals. The amount to be rebated shall be reduced by the amount of any
227 reduction in reimbursement which may be imposed by a commercial health plan or insurer under
228 a quality incentive or awards program in which the hospital is a participant.

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229 (D) A procedure where if the excess above the increase in the Consumer Price Index for
230 all Urban Consumers for hospital inpatient services or hospital outpatient services is two percent
231 or greater the authority may order the rebate of the amount which exceeds the respective indices
232 by two percent or more to all health plans or insurers which paid such excess unless the party
233 provides written justification of such increase satisfactory to the authority taking into account case
234 mix index, outliers and extraordinarily high cost outpatient procedure utilizations.

235 (E) The ability of the authority to investigate, as needed, to ensure compliance with the
236 cooperative agreement.

237 (F) The ability of the authority to take appropriate action, including revocation of a
238 certificate of approval, if it determines that:

239 (i) The parties to the agreement are not complying with the terms of the agreement or the
240 terms and conditions of approval;

241 (ii) The authority's approval was obtained as a result of an intentional material
242 misrepresentation;

243 (iii) The parties to the agreement have failed to pay any required fee; or

244 (iv) The benefits resulting from the approved agreement no longer outweigh the
245 disadvantages attributable to the reduction in competition resulting from the agreement.

246 (G) If the authority determines the parties to an approved cooperative agreement have
247 engaged in conduct that is contrary to state policy or the public interest, including the failure to
248 take action required by state policy or the public interest, the authority may initiate a proceeding
249 to determine whether to require the parties to refrain from taking such action or requiring the
250 parties to take such action, regardless of whether or not the benefits of the cooperative agreement
251 continue to outweigh its disadvantages. Any determination by the authority shall be final. The
252 authority is specifically authorized to enforce its determination in the circuit court of Kanawha

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253 County or the circuit court where the principal place of business of a party to the cooperative
254 agreement is located.

255 (H) Fees as set forth in subsection (h).

256 (h) Fees. — The authority may set fees for the approval of a cooperative agreement.
257 These fees shall be for all reasonable and actual costs incurred by the authority in its review and
258 approval of any cooperative agreement pursuant to this section. These fees shall not exceed
259 \$75,000. Additionally, the authority may assess an annual fee not to exceed \$75,000 for the
260 supervision of any cooperative agreement approved pursuant to this section and to support the
261 implementation and administration of the provisions of this section.

262 (i) Miscellaneous provisions. —

263 (1) Hospital parties to a cooperative agreement involving the combination of two or more
264 hospitals through merger, consolidation or acquisition and who seek the authority's approval of
265 such agreement may, as part of the application for approval, agree to maintain their existing rate
266 schedules pursuant to the agreement of the parties or any agreement with any state official or
267 agency.

268 (2) The authority shall maintain on file all cooperative agreements the authority has
269 approved, including any conditions imposed by the authority.

270 (3) Any party to a cooperative agreement that terminates its participation in such
271 cooperative agreement shall file a notice of termination with the authority thirty days after
272 termination.

273 (4) No hospital which is a party to a cooperative agreement for which approval is required
274 pursuant to this section may knowingly bill or charge for health services resulting from, or
275 associated with, such cooperative agreement until approved by the authority. Additionally, no
276 hospital which is a party to a cooperative agreement may knowingly bill or charge for health

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277 services resulting from, or associated with, such cooperative agreement for which approval has
278 been revoked or terminated.

279 (5) By submitting an application for review of a cooperative agreement pursuant to this
280 section, the hospitals or health care providers shall be deemed to have agreed to submit to the
281 regulation and supervision of the authority as provided in this section.

ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.

§16-29G-2. Creation of West Virginia Health Information Network board of directors; powers of the board of directors.

1 (a) The network is created under the Health Care Authority for administrative, personnel
2 and technical support purposes. The network shall be managed and operated by a board of
3 directors. The board of directors is an independent, self-sustaining board with the powers
4 specified in this article.

5 (b) The board is part-time. Each member shall devote the time necessary to carry out the
6 duties and obligations of members on the board.

7 (c) Members appointed by the Governor may pursue and engage in another business or
8 occupation or gainful employment that is not in conflict with his or her duties as a member of the
9 board.

10 (d) The board shall meet at such times as the chair may decide. Eight members of the
11 board are a quorum for the purposes of the transaction of business and for the performance of
12 any duty.

13 (e) A majority vote of the members present is required for any final determination by the
14 board. Voting by proxy is not allowed.

15 (f) The Governor may remove any board member for incompetence, misconduct, gross
16 immorality, misfeasance, malfeasance or nonfeasance in office.

17 (g) The board shall consist of seventeen members, designated as follows:

18 (1) The Dean of the West Virginia University School of Medicine or his or her designee;

19 (2) The Dean of the Marshall University John C. Edwards School of Medicine or his or her
20 designee;

21 (3) The President of the West Virginia School of Osteopathic Medicine or his or her
22 designee;

23 (4) The Secretary of the Department of Health and Human Resources or his or her
24 designee;

25 (5) The President of the West Virginia Board of Pharmacy or his or her designee;

26 (6) The Director of the Public Employees Insurance Agency or his or her designee;

27 (7) The Chief Technology Officer of the Office of Technology or his or her designee;

28 (8) The Chair of the Health Care Authority or his or her designee;

29 (9) The President of the West Virginia Hospital Association or his or her designee;

30 (10) The President of the West Virginia State Medical Association or his or her designee;

31 (11) The Chief Executive Officer of the West Virginia Health Care Association or his or her
32 designee;

33 (12) The Executive Director of the West Virginia Primary Care Association or his or her
34 designee; and

35 (13) Five public members that serve at the will and pleasure of the Governor and are
36 appointed by the Governor with advice and consent of the Senate as follows:

37 (i) One member with legal expertise in matters concerning the privacy and security of
38 health care information;

39 (ii) Two physicians actively engaged in the practice of medicine in the state;

40 (iii) One member engaged in the business of health insurance who is employed by a
41 company that has its headquarters in West Virginia; and

42 (iv) The chief executive officer of a West Virginia corporation working with West Virginia
43 health care providers, insurers, businesses and government to facilitate the use of information
44 technology to improve the quality, efficiency and safety of health care for West Virginians.

45 (h) The Governor shall appoint one of the board members to serve as chair of the board
46 at the Governor's will and pleasure. The board shall annually select one of its members to serve
47 as vice chair. The ~~Chair~~ Executive Director of the Health Care Authority shall serve as the
48 secretary-treasurer of the board.

49 (i) The public members of the board shall serve a term of four years and may serve two
50 consecutive terms. At the end of a term, a member of the board shall continue to serve until a
51 successor is appointed. Those members designated in subdivisions (1) through (12), inclusive,
52 subsection (g) of this section shall serve on the board only while holding the position that entitle
53 them to membership on the board.

54 (j) The board may propose the adoption or amendment of rules to the Health Care
55 Authority to carry out the objectives of this article.

56 (k) The board may appoint committees or subcommittees to investigate and make
57 recommendations to the full board. Members of such committees or subcommittees need not be
58 members of the board.

59 (l) Each member of the board and the board's committees and subcommittees is entitled
60 to be reimbursed for actual and necessary expenses incurred for each day or portion thereof
61 engaged in the discharge of official duties in a manner consistent with guidelines of the Travel
62 Management Office of the Department of Administration.

§16-29G-5. Immunity from suit; limitation of liability.

1 The network is not a health care provider and is not subject to claims under article seven-
2 b, chapter fifty-five of this code. No person who participates or subscribes to the services or
3 information provided by the network is liable in any action for damages or costs of any nature, in
4 law or equity, which result solely from that person's use or failure to use network information or
5 data that was imputed or retrieved in accordance with the Health Insurance Portability and
6 Accountability Act of 1996 and any amendments and regulations under the act, state
7 confidentiality laws and the rules of the network as approved by the Executive Director of the
8 Health Care Authority. In addition, no person is subject to antitrust or unfair competition liability

9 based on membership or participation in the network, which provides an essential governmental
10 function for the public health and safety and enjoys state action immunity.

§16-29G-6. Property rights.

1 (a) All persons providing information and data to the network shall retain a property right
2 in that information or data, but grant to the other participants or subscribers a nonexclusive license
3 to retrieve and use that information or data in accordance with the Health Insurance Portability
4 and Accountability Act of 1996 and any amendments and regulations under the act, state
5 confidentiality laws and the legislative rules proposed by the Health Care Authority.

6 (b) All processes or software developed, designed or purchased by the network shall
7 remain its property subject to use by participants or subscribers in accordance with the rules ~~of~~
8 ~~regulations~~ proposed by the Health Care Authority.

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**ARTICLE 29I. WEST VIRGINIA HEALTH CARE AUTHORITY REVOLVING LOAN
AND GRANT FUND.**

§16-29I-4. Revolving fund created.

1 (a) (1) The ~~board~~ authority shall create and establish a special revolving fund of moneys
2 made available to the fund by appropriation, grant, contribution, loan, or statutory dedication to
3 be known as the West Virginia Health Care Authority Revolving Loan Fund. The fund shall be
4 governed, administered and accounted for by the ~~board~~ executive director or his or her designee.

5 (2) Any money collected pursuant to this section, including the repayment of loans made
6 by the ~~board~~ authority, shall be paid into the fund by any state agent or entity charged with the
7 collection of the money, credited to the fund, and used only for the purposes set forth in this article.

8 (b) The ~~board~~ authority may pledge revenues to the fund and from time to time establish
9 one or more restricted accounts within the fund for the purpose of providing funds to guarantee
10 loans made pursuant to this article. No loan guarantee shall be made pursuant to this article
11 unless recourse under the loan guarantee is limited solely to amounts in the restricted account or

12 accounts. No person shall have any recourse to any restricted accounts established pursuant to
13 this subsection other than those persons to whom the loan guarantee or loan guarantees have
14 been made.

15 (c) Each loan or loan guarantee made or provided by the ~~board~~ authority from the fund
16 shall be evidenced by a loan document, a loan guarantee document or any other writing or
17 document or documents as the ~~board~~ authority may consider appropriate, between the Health
18 Care Authority ~~Board~~ and the hospital or hospitals to which the loan, or loan guarantee, was made
19 available or provided. The agreements shall include, without limitation and to the extent
20 applicable, the following provisions:

21 (1) The estimated total costs of the hospital restructuring plan, the amount of the loan, or
22 loan guarantee and the terms of repayment and the security for the loan if any;

23 (2) The specific purposes for which the loan proceeds shall be expended and the
24 conditions and procedures for dispersing a loan proceeds; and

25 (3) The duties, conditions and obligations imposed by the ~~board~~ authority upon the hospital
26 or hospitals regarding the hospital restructuring plan.

27 (d) Moneys in the fund shall be approved for expenditure by the Health Care Authority
28 ~~Board~~ only as the moneys are available in the fund. Approval of expenditures by the ~~board~~
29 authority may occur without appropriation by the Legislature prior to July 1, 2008. After July 1,
30 2008, expenditures from the fund shall be made by the ~~board~~ authority only pursuant to available
31 amounts appropriated by the Legislature.