

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **Senate Bill 597**

**FISCAL  
NOTE**

BY SENATORS FERNS AND PLYMALE

[Introduced February 12, 2016;

Referred to the Committee on Health and Human  
Resources; and then to the Committee on Finance.]

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 §16-2D-2 and  
4 §16-2D-5 of said code; to amend and reenact §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5  
5 and §16-5F-6 of said code; to amend and reenact §16-29B-3, §16-29B-5, §16-29B-6, §16-  
6 29B-7, §16-29B-8, §16-29B-9, §16-29B-11, §16-29B-12, §16-29B-13, §16-29B-14, §16-  
7 29B-15, §16-29B-17, §16-29B-18, §16-29B-19a, §16-29B-22, §16-29B-23, §16-29B-24,  
8 §16-29B-25 and §16-29B-26 of said code; to amend said code by adding thereto a new  
9 section, designated §16-29B-5a; to amend and reenact §16-29G-2, §16-29G-4, §16-29G-  
10 5 and §16-29G-6 of said code; and to amend and reenact §16-29I-4 of said code, all  
11 relating generally to the Health Care Authority; employment of the members of the Board  
12 of the West Virginia Health Care Authority; setting salaries for board members; creating  
13 the position of Executive Director of the Health Care Authority; making the executive  
14 director the administrative head of the Health Care Authority; setting forth the qualifications  
15 of the executive director; adding the executive director to the Public Employees Insurance  
16 Agency Advisory Board; clarifying where the administrative duties of the Health Care  
17 Authority are to be carried out; clarifying that the board of Directors of the Health Care  
18 Authority is the adjudicatory arm of the Health Care Authority; requiring that the members  
19 of the board of directors be employed on a part-time basis; setting forth other employment  
20 requirements for the board of directors; expanding the board of directors from three to five  
21 members; setting forth qualifications for appointment to the board of directors; providing  
22 that the board of directors shall report to the executive director; establishing compensation  
23 for the board of directors; setting forth minimum hearing requirements before the board of  
24 directors; providing for recommended decisions by the board of directors to the executive  
25 director; setting forth executive director procedure for review and approval of  
26 recommended decisions of the board of directors; providing for remand of a decision;

27 clarifying that the executive director has all rule-setting powers; providing for a study by  
 28 the Health Care Authority of concerns of hospitals in border counties; requiring a  
 29 comprehensive study of the certificate of need program, including possible elimination of  
 30 certificate of need; eliminating rate review from the authority of the Health Care Authority;  
 31 making technical corrections; and updating code reference.

*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 §16-2D-2 and §16-2D-5 of said code be amended and reenacted; that §16-5F-2, §16-5F-3,  
 5 §16-5F-4, §16-5F-5 and §16-5F-6 of said code be amended and reenacted; that §16-29B-3, §16-  
 6 29B-5, §16-29B-6, §16-29B-7, §16-29B-8, §16-29B-9, §16-29B-11, §16-29B-12, §16-29B-13,  
 7 §16-29B-14, §16-29B-15, §16-29B-17, §16-29B-18, §16-29B-19a, §16-29B-22, §16-29B-23, §16-  
 8 29B-24, §16-29B-25 and §16-29B-26 of said code be amended and reenacted; that said code be  
 9 amended by adding thereto a new section, designated §16-29B-5a; that §16-29G-2, §16-29G-4,  
 10 §16-29G-5 and §16-29G-6 of said code be amended and reenacted; and that §16-29I-4 of said  
 11 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 or  
 32 receivable by providers after May 31, 1993.

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 2D. CERTIFICATE OF NEED.**

**§16-2D-2. Definitions.**

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

3 As used in this article, unless otherwise indicated by the context:

4 (a) "Affected person" means:

5 (1) The applicant;

6 (2) An agency or organization representing consumers;

7 (3) Any individual residing within the geographic area served or to be served by the  
8 applicant;

9 (4) Any individual who regularly uses the health care facilities within that geographic area;

10 (5) The health care facilities located within this state which provide services similar to the  
11 services of the facility under review and which will be significantly affected by the proposed  
12 project;

13 (6) The health care facilities located within this state which, before receipt by the state  
14 agency of the proposal being reviewed, have formally indicated an intention to provide similar  
15 services within this state in the future;

16 (7) Third-party payors who reimburse health care facilities within this state similar to those  
17 proposed for services;

18 (8) Any agency that establishes rates for health care facilities within this state similar to  
19 those proposed; or

20 (9) Organizations representing health care providers.

21 (b) "Ambulatory health care facility" means a free-standing facility that provides health  
22 care to noninstitutionalized and nonhomebound persons on an outpatient basis. For purposes of  
23 this definition, a free-standing facility is not located on the campus of an existing health care  
24 facility. This definition does not include any facility engaged solely in the provision of lithotripsy  
25 services or the private office practice of any one or more health professionals licensed to practice  
26 in this state pursuant to the provisions of chapter thirty of this code: *Provided*, That this exemption  
27 from review may not be construed to include practices where major medical equipment otherwise  
28 subject to review under the provisions of this article is acquired, offered or developed: *Provided*,  
29 *however*, That this exemption from review may not be construed to include certain health services  
30 otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of  
31 this article.

32 (c) "Ambulatory surgical facility" means a free-standing facility that provides surgical  
33 treatment to patients not requiring hospitalization. For purposes of this definition, a free-standing

34 facility is not physically attached to a health care facility. This definition does not include the private  
35 office practice of any one or more health professionals licensed to practice surgery in this state  
36 pursuant to the provisions of chapter thirty of this code: *Provided*, That this exemption from review  
37 may not be construed to include practices where major medical equipment otherwise subject to  
38 review under the provisions of this article is acquired, offered or developed: *Provided, however*,  
39 That this exemption from review may not be construed to include health services otherwise  
40 subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

41 (d)"Applicant" means: (1) The governing body or the person proposing a new institutional  
42 health service who is, or will be, the health care facility licensee wherein the new institutional  
43 health service is proposed to be located; and (2) in the case of a proposed new institutional health  
44 service not to be located in a licensed health care facility, the governing body or the person  
45 proposing to provide the new institutional health service. Incorporators or promoters who will not  
46 constitute the governing body or persons responsible for the new institutional health service may  
47 not be an applicant.

48 (e) "Bed capacity" means the number of beds licensed to a health care facility or the  
49 number of adult and pediatric beds permanently staffed and maintained for immediate use by  
50 inpatients in patient rooms or wards in an unlicensed facility.

51 (f) "Campus" means the adjacent grounds and buildings, or grounds and buildings not  
52 separated by more than a public right-of-way, of a health care facility.

53 (g) "Capital expenditure" means:

54 (1) An expenditure made by or on behalf of a health care facility, which:

55 (A) (i) Under generally accepted accounting principles is not properly chargeable as an  
56 expense of operation and maintenance; or (ii) is made to obtain either by lease or comparable  
57 arrangement any facility or part thereof or any equipment for a facility or part; and

58 (B)(i) Exceeds the expenditure minimum; (ii) is a substantial change to the bed capacity  
59 of the facility with respect to which the expenditure is made; or (iii) is a substantial change to the  
60 services of such facility;

61 (2) The donation of equipment or facilities to a health care facility, which if acquired directly  
62 by that facility would be subject to review;

63 (3) The transfer of equipment or facilities for less than fair market value if the transfer of  
64 the equipment or facilities at fair market value would be subject to review; or

65 (4) A series of expenditures, if the sum total exceeds the expenditure minimum and if  
66 determined by the state agency to be a single capital expenditure subject to review. In making  
67 this determination, the state agency shall consider: Whether the expenditures are for components  
68 of a system which is required to accomplish a single purpose; whether the expenditures are to be  
69 made over a two-year period and are directed towards the accomplishment of a single goal within  
70 the health care facility's long-range plan; or whether the expenditures are to be made within a  
71 two-year period within a single department such that they will constitute a significant  
72 modernization of the department.

73 (h) "Expenditure minimum" means \$2,700,000 for the calendar year 2009. The state  
74 agency shall adjust the expenditure minimum annually and publish an update of the amount on  
75 or before December 31, of each year. The expenditure minimum adjustment shall be based on  
76 the DRI inflation index published in the *Global Insight DRI/WEFA Health Care Cost Review*, or its  
77 successor or appropriate replacement index. This amount shall include the cost of any studies,  
78 surveys, designs, plans, working drawings, specifications and other activities, including staff effort  
79 and consulting and other services essential to the acquisition, improvement, expansion or  
80 replacement of any plant or equipment.

81 (i) "Health", used as a term, includes physical and mental health.

82 (j) "Health care facility" means a publicly or privately owned facility, agency or entity that  
83 offers or provides health care services, whether a for-profit or nonprofit entity and whether or not  
84 licensed, or required to be licensed, in whole or in part, and includes, but is not limited to,  
85 hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing  
86 hemodialysis units; intermediate care facilities; ambulatory health care facilities; ambulatory  
87 surgical facilities; home health agencies; hospice agencies; rehabilitation facilities; health

88 maintenance organizations; and community mental health and intellectual disability facilities. For  
89 purposes of this definition, "community mental health and intellectual disability facility" means a  
90 private facility which provides such comprehensive services and continuity of care as emergency,  
91 outpatient, partial hospitalization, inpatient or consultation and education for individuals with  
92 mental illness, intellectual disability or drug or alcohol addiction.

93 (k) "Health care provider" means a person, partnership, corporation, facility, hospital or  
94 institution licensed or certified or authorized by law to provide professional health care service in  
95 this state to an individual during that individual's medical, remedial or behavioral health care,  
96 treatment or confinement.

97 (l) "Health maintenance organization" means a public or private organization which:

98 (1) Is required to have a certificate of authority to operate in this state pursuant to section  
99 three, article twenty-five-a, chapter thirty-three of this code; or

100 (2) (A) Provides or otherwise makes available to enrolled participants health care services,  
101 including substantially the following basic health care services: Usual physician services,  
102 hospitalization, laboratory, X ray, emergency and preventive services and out-of-area coverage;

103 (B) Is compensated except for copayments for the provision of the basic health care  
104 services listed in paragraph (A) of this subdivision to enrolled participants on a predetermined  
105 periodic rate basis without regard to the date the health care services are provided and which is  
106 fixed without regard to the frequency, extent or kind of health service actually provided; and

107 (C) Provides physicians' services: (i) Directly through physicians who are either  
108 employees or partners of the organization; or (ii) through arrangements with individual physicians  
109 or one or more groups of physicians organized on a group practice or individual practice basis.

110 (m) "Health services" means clinically related preventive, diagnostic, treatment or  
111 rehabilitative services, including alcohol, drug abuse and mental health services.

112 (n) "Home health agency" means an organization primarily engaged in providing  
113 professional nursing services either directly or through contract arrangements and at least one of  
114 the following services: Home health aide services, other therapeutic services, physical therapy,

115 speech therapy, occupational therapy, nutritional services or medical social services to persons  
116 in their place of residence on a part-time or intermittent basis.

117 (o) "Hospice agency" means a private or public agency or organization licensed in West  
118 Virginia for the administration or provision of hospice care services to terminally ill persons in the  
119 persons' temporary or permanent residences by using an interdisciplinary team, including, at a  
120 minimum, persons qualified to perform nursing services; social work services; the general practice  
121 of medicine or osteopathy; and pastoral or spiritual counseling.

122 (p) "Hospital" means a facility licensed as such pursuant to the provisions of article five-b  
123 of this chapter, and any acute care facility operated by the state government, that primarily  
124 provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick  
125 persons under the supervision of physicians and includes psychiatric and tuberculosis hospitals.

126 (q) "Intermediate care facility" means an institution that provides health-related services  
127 to individuals with mental or physical conditions that require services above the level of room and  
128 board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

129 (r) "Long-range plan" means a document formally adopted by the legally constituted  
130 governing body of an existing health care facility or by a person proposing a new institutional  
131 health service which contains the information required by the state agency in rules adopted  
132 pursuant to section eight of this article.

133 (s) "Major medical equipment" means a single unit of medical equipment or a single  
134 system of components with related functions which is used for the provision of medical and other  
135 health services and costs in excess of \$2,700,000 in the calendar year 2009. The state agency  
136 shall adjust the dollar amount specified in this subsection annually and publish an update of the  
137 amount on or before December 31, of each year. The adjustment of the dollar amount shall be  
138 based on the DRI inflation index published in the *Global Insight DRI/WEFA Health Care Cost*  
139 *Review* or its successor or appropriate replacement index. This term does not include medical  
140 equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services  
141 if the clinical laboratory is independent of a physician's office and a hospital and it has been

142 determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs  
143 ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether  
144 medical equipment is major medical equipment, the cost of studies, surveys, designs, plans,  
145 working drawings, specifications and other activities essential to the acquisition of such equipment  
146 shall be included. If the equipment is acquired for less than fair market value, the term "cost"  
147 includes the fair market value.

148 (t) "Medically underserved population" means the population of an area designated by the  
149 state agency as having a shortage of personal health services. The state agency may consider  
150 unusual local conditions that are a barrier to accessibility or availability of health services. The  
151 designation shall be in rules adopted by the state agency pursuant to section eight of this article,  
152 and the population so designated may include the state's medically underserved population  
153 designated by the federal Secretary of Health and Human Services under Section 330(b)(3) of  
154 the Public Health Service Act, as amended, Title 42 U.S.C. §254.

155 (u) "New institutional health service" means any service as described in section three of  
156 this article.

157 (v) "Nonhealth-related project" means a capital expenditure for the benefit of patients,  
158 visitors, staff or employees of a health care facility and not directly related to preventive,  
159 diagnostic, treatment or rehabilitative services offered by the health care facility. This includes,  
160 but is not limited to, chapels, gift shops, news stands, computer and information technology  
161 systems, educational, conference and meeting facilities, but excluding medical school facilities,  
162 student housing, dining areas, administration and volunteer offices, modernization of structural  
163 components, boiler repair or replacement, vehicle maintenance and storage facilities, parking  
164 facilities, mechanical systems for heating, ventilation systems, air conditioning systems and  
165 loading docks.

166 (w) "Offer", when used in connection with health services, means that the health care  
167 facility or health maintenance organization holds itself out as capable of providing, or as having  
168 the means to provide, specified health services.

169 (x) "Person" means an individual, trust, estate, partnership, committee, corporation,  
170 association and other organizations such as joint-stock companies and insurance companies, a  
171 state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

172 (y) "Physician" means a doctor of medicine or osteopathy legally authorized to practice by  
173 the state.

174 (z) "Proposed new institutional health service" means any service as described in section  
175 three of this article.

176 (aa) "Psychiatric hospital" means an institution that primarily provides to inpatients, by or  
177 under the supervision of a physician, specialized services for the diagnosis, treatment and  
178 rehabilitation of mentally ill and emotionally disturbed persons.

179 (bb) "Rehabilitation facility" means an inpatient facility operated for the primary purpose of  
180 assisting in the rehabilitation of disabled persons through an integrated program of medical and  
181 other services which are provided under competent professional supervision.

182 (cc) "Review agency" means an agency of the state, designated by the Governor as the  
183 agency for the review of state agency decisions.

184 (dd) "Skilled nursing facility" means an institution, or a distinct part of an institution, that  
185 primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to  
186 injured, disabled or sick persons.

187 (ee) "State agency" means the Health Care Authority created, established and continued  
188 pursuant to article twenty-nine-b of this chapter. The Executive Director as set forth in section  
189 three, article twenty-nine-b of this chapter, is the administrative head of the Health Care Authority.

190 (ff) "State health plan" means the document approved by the Governor after preparation  
191 by the former statewide health coordinating council or that document as approved by the  
192 Governor after amendment by the former health care planning council or the state agency.

193 (gg) "Substantial change to the bed capacity" of a health care facility means any change,  
194 associated with a capital expenditure, that increases or decreases the bed capacity or relocates  
195 beds from one physical facility or site to another, but does not include a change by which a health

196 care facility reassigns existing beds as swing beds between acute care and long-term care  
197 categories: *Provided*, That a decrease in bed capacity in response to federal rural health  
198 initiatives is excluded from this definition.

199 (hh)"Substantial change to the health services" of a health care facility means: (1) The  
200 addition of a health service offered by or on behalf of the health care facility which was not offered  
201 by or on behalf of the facility within the twelve-month period before the month in which the service  
202 is first offered; or (2) the termination of a health service offered by or on behalf of the facility:  
203 *Provided*, That "substantial change to the health services" does not include the providing of  
204 ambulance service, wellness centers or programs, adult day care or respite care by acute care  
205 facilities.

206 (ii) "To develop", when used in connection with health services, means to undertake those  
207 activities which upon their completion will result in the offer of a new institutional health service or  
208 the incurring of a financial obligation in relation to the offering of such a service.

**§16-2d-5. Powers. Powers and duties of state agency.**

1 (a) The state agency shall administer the certificate of need program as provided by this  
2 article.

3 (b) The state agency is responsible for coordinating and developing the health planning  
4 research efforts of the state and for amending and modifying the state health plan which includes  
5 the certificate of need standards. The state agency shall review the state health plan, including  
6 the certificate of need standards and make any necessary amendments and modifications. The  
7 state agency shall also review the cost effectiveness of the certificate of need program. The state  
8 agency may form task forces to assist it in addressing these issues. The task forces shall be  
9 composed of representatives of consumers, business, providers, payers and state agencies.

10 (c) The state agency may seek advice and assistance of other persons, organizations and  
11 other state agencies in the performance of the state agency's responsibilities under this article.

12 (d) For health services for which competition appropriately allocates supply consistent with  
13 the state health plan, the state agency shall, in the performance of its functions under this article,

14 give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness  
15 and access, to actions which would strengthen the effect of competition on the supply of the  
16 services.

17 (e) For health services for which competition does not or will not appropriately allocate  
18 supply consistent with the state health plan, the state agency shall, in the exercise of its functions  
19 under this article, take actions, where appropriate to advance the purposes of quality assurance,  
20 cost effectiveness and access and the other purposes of this article, to allocate the supply of the  
21 services.

22 (f) Notwithstanding the provisions of section seven of this article, the state agency may  
23 charge a fee for the filing of any application, the filing of any notice in lieu of an application, the  
24 filing of any exemption determination request or the filing of any request for a declaratory ruling.  
25 The fees charged may vary according to the type of matter involved, the type of health service or  
26 facility involved or the amount of capital expenditure involved: *Provided*, That any fee charged  
27 pursuant to this subsection may not exceed a dollar amount to be established by procedural rule.  
28 The state agency shall evaluate and amend any procedural rule promulgated prior to the  
29 amendments to this subsection made during the 2009 regular session of the Legislature. The fees  
30 charged shall be deposited into a special fund known as the Certificate of Need Program Fund to  
31 be expended for the purposes of this article.

32 (g) A hospital, nursing home or other health care facility may not add any intermediate  
33 care or skilled nursing beds to its current licensed bed complement. This prohibition also applies  
34 to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds:  
35 *Provided*, That hospitals eligible under the provisions of section four-a of this article and  
36 subsection (i) of this section may convert acute care beds to skilled nursing beds in accordance  
37 with the provisions of these sections, upon approval by the state agency. Furthermore, a  
38 certificate of need may not be granted for the construction or addition of any intermediate care or  
39 skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe  
40 existing facilities. A health care facility in receipt of a certificate of need for the construction or

41 addition of intermediate care or skilled nursing beds which was approved prior to the effective  
42 date of this section shall incur an obligation for a capital expenditure within twelve months of the  
43 date of issuance of the certificate of need. Extensions may not be granted beyond the twelve-  
44 month period. The state agency shall establish a task force or utilize an existing task force to  
45 study the need for additional nursing facility beds in this state. The study shall include a review of  
46 the current moratorium on the development of nursing facility beds; the exemption for the  
47 conversion of acute care beds to skilled nursing facility beds; the development of a methodology  
48 to assess the need for additional nursing facility beds; and certification of new beds both by  
49 Medicare and Medicaid. The task force shall be composed of representatives of consumers,  
50 business, providers, payers and government agencies.

51 (h) No additional intermediate care facility for individuals with an intellectual disability (ICF/  
52 ID) beds may be granted a certificate of need, except that prohibition does not apply to ICF/MR  
53 beds approved under the Kanawha County circuit court order of August 3, 1989, civil action  
54 number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981).

55 (i) Notwithstanding the provisions of subsection (g) of this section and further  
56 notwithstanding the provisions of subsection (b), section three of this article, an existing acute  
57 care hospital may apply to the Health Care Authority for a certificate of need to convert acute care  
58 beds to skilled nursing beds: *Provided*, That the proposed skilled nursing beds are Medicare  
59 certified only: *Provided, however*, That any hospital which converts acute care beds to Medicare  
60 certified only skilled nursing beds shall not bill for any Medicaid reimbursement for any converted  
61 beds. In converting beds, the hospital shall convert a minimum of one acute care bed into one  
62 Medicare-certified only skilled nursing bed. The Health Care Authority may require a hospital to  
63 convert up to and including three acute care beds for each Medicare-certified only skilled nursing  
64 bed: *Provided further*, That a hospital designated or provisionally designated by the state agency  
65 as a rural primary care hospital may convert up to thirty beds to a distinct-part nursing facility,  
66 including skilled nursing beds and intermediate care beds, on a one-for-one basis if the rural  
67 primary care hospital is located in a county without a certified freestanding nursing facility and the

68 hospital may bill for Medicaid reimbursement for the converted beds: *And provided further*, That  
69 if the hospital rejects the designation as a rural primary care hospital, then the hospital may not  
70 bill for Medicaid reimbursement. The Health Care Authority shall adopt rules to implement this  
71 subsection which require that:

72 (1) All acute care beds converted shall be permanently deleted from the hospital's acute  
73 care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute  
74 care beds to its bed complement without satisfying the requirements of subsection (b), section  
75 three of this article for which purposes an addition, whether by conversion or otherwise, shall be  
76 considered a substantial change to the bed capacity of the hospital notwithstanding the definition  
77 of that term found in subsection (ff), section two of this article.

78 (2) The hospital shall meet all federal and state licensing certification and operational  
79 requirements applicable to nursing homes including a requirement that all skilled care beds  
80 created under this subsection shall be located in distinct-part, long-term care units.

81 (3) The hospital shall demonstrate a need for the project.

82 (4) The hospital shall use existing space for the Medicare-certified only skilled nursing  
83 beds. Under no circumstances shall the hospital construct, lease or acquire additional space for  
84 purposes of this section.

85 (5) The hospital shall notify the acute care patient, prior to discharge, of facilities with  
86 skilled nursing beds which are located in or near the patient's county of residence. Nothing in this  
87 subsection negatively affects the rights of inspection and certification which are otherwise  
88 required by federal law or regulations or by this code or duly adopted rules of an authorized state  
89 entity.

90 (j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care  
91 center with no skilled nursing beds may apply to the Health Care Authority for a certificate of need  
92 for up to sixty skilled nursing beds provided the proposed skilled beds are Medicare-certified only.  
93 On a statewide basis, a maximum of one hundred eighty skilled beds which are Medicare-certified  
94 only may be developed pursuant to this subsection. The state health plan is not applicable to

95 projects submitted under this subsection. The Health Care Authority shall adopt rules to  
96 implement this subsection which shall include a requirement that:

97 (A) The one hundred eighty beds are to be distributed on a statewide basis;

98 (B) There be a minimum of twenty beds and a maximum of sixty beds in each approved  
99 unit;

100 (C) The unit developed by the retirement life care center meets all federal and state  
101 licensing certification and operational requirements applicable to nursing homes;

102 (D) The retirement center demonstrates a need for the project;

103 (E) The retirement center offers personal care, home health services and other lower  
104 levels of care to its residents; and

105 (F) The retirement center demonstrates both short- and long-term financial feasibility.

106 (2) Nothing in this subsection negatively affects the rights of inspection and certification  
107 which are otherwise required by federal law or regulations or by this code or duly adopted rules  
108 of an authorized state entity.

109 (k) The state agency may order a moratorium upon the offering or development of a new  
110 institutional health service when criteria and guidelines for evaluating the need for the new  
111 institutional health service have not yet been adopted or are obsolete. The state agency may also  
112 order a moratorium on the offering or development of a health service, notwithstanding the  
113 provisions of subdivision (5), subsection (b), section three of this article, when it determines that  
114 the proliferation of the service may cause an adverse impact on the cost of health care or the  
115 health status of the public. A moratorium shall be declared by a written order which shall detail  
116 the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need  
117 for the health service affected by the moratorium, or one hundred eighty days from the declaration  
118 of a moratorium, whichever is less, the moratorium shall be declared to be over and applications  
119 for certificates of need are processed pursuant to section six of this article: *Provided*, That the  
120 state agency may not order a moratorium upon the offering or development of skilled nursing  
121 facilities providing services for the treatment of children under one year of age suffering from

122 Neonatal Abstinence Syndrome.

123 (l) (1) The state agency shall coordinate the collection of information needed to allow the  
124 state agency to develop recommended modifications to certificate of need standards as required  
125 in this article. When the state agency proposes amendments or modifications to the certificate of  
126 need standards, it shall file with the Secretary of State, for publication in the State Register, a  
127 notice of proposed action, including the text of all proposed amendments and modifications, and  
128 a date, time and place for receipt of general public comment. To comply with the public comment  
129 requirement of this section, the state agency may hold a public hearing or schedule a public  
130 comment period for the receipt of written statements or documents.

131 (2) When amending and modifying the certificate of need standards, the state agency shall  
132 identify relevant criteria contained in section six of this article or rules adopted pursuant to section  
133 eight of this article and apply those relevant criteria to the proposed new institutional health service  
134 in a manner that promotes the public policy goals and legislative findings contained in section one  
135 of this article. In doing so, the state agency may consult with or rely upon learned treatises in  
136 health planning, recommendations and practices of other health planning agencies and  
137 organizations, recommendations from consumers, recommendations from health care providers,  
138 recommendations from third-party payors, materials reflecting the standard of care, the state  
139 agency's own developed expertise in health planning, data accumulated by the state agency or  
140 other local, state or federal agency or organization and any other source deemed relevant to the  
141 certificate of need standards proposed for amendment or modification.

142 (3) All proposed amendments and modifications to the certificate of need standards, with  
143 a record of the public hearing or written statements and documents received pursuant to a public  
144 comment period, shall be presented to the Governor. Within thirty days of receiving the proposed  
145 amendments or modifications, the Governor shall either approve or disapprove all or part of the  
146 amendments and modifications and, for any portion of amendments or modifications not  
147 approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments  
148 or modifications not approved by the Governor may be revised and resubmitted.

149 (4) The certificate of need standards adopted pursuant to this section which are applicable  
 150 to the provisions of this article are not subject to article three, chapter twenty-nine-a of this code.  
 151 The state agency shall follow the provisions set forth in this subsection for giving notice to the  
 152 public of its actions, holding hearings or receiving comments on the certificate of need standards.  
 153 The certificate of need standards in effect on November 29, 2005, and all prior versions  
 154 promulgated and adopted in accordance with the provisions of this section are and have been in  
 155 full force and effect from each of their respective dates of approval by the Governor.

156 (m) The state agency may exempt from or expedite, ~~rate review~~ certificate of need and  
 157 annual assessment requirements and issue grants and loans to financially vulnerable health care  
 158 facilities located in underserved areas that the state agency and the Office of Community and  
 159 Rural Health Services determine are collaborating with other providers in the service area to  
 160 provide cost effective health care services.

## **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 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 the Code of West Virginia, in a qualified newspaper published within the county within which  
 6 such covered facility or related organization is located, an annual report prepared by the covered  
 7 facility's or 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 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  
18 administrative 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 ~~(j)(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 means  
7 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 of the board members when in session as the board  
44 shall be considered the action of the board. A vacancy in the board shall not affect the right or  
45 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, nonvoting* 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 as compensation for  
56 his or her services an annual salary of \$15,000. 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 duties: *Provided*, That, for any database to which the  
20 ~~board~~ Executive Director gains access, the use and dissemination of information from the  
21 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 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~~ of every year as necessary.

**§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 the first day of July in each year and shall be paid into the  
 44 State Treasury and kept as a special revolving fund designated "Health Care Cost Review Fund",  
 45 with the moneys in such fund being expendable after appropriation by the Legislature for purposes  
 46 consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall  
 47 not revert to the treasury, but shall remain in said fund and such moneys shall be expendable  
 48 after appropriation 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  
8 Directors who shall serve as the adjudicatory arm of the Health Care Authority. The Executive  
9 Director shall 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  
36 thirty days of the hearing. The Executive Director shall approve the recommended decision as  
37 final within thirty days of receipt unless he or she finds a factual or legal error in the decision's  
38 findings or conclusions. If The Executive Director feels that there is insufficient information upon  
39 which to base the decision, he or she may remand the decision to the board for further  
40 consideration. The Executive Director may not consider any additional information in making the  
41 decision final that was not presented to the board during the course of the hearing. Once the  
42 Executive Director approves the decision as final the copy of the decision and accompanying  
43 findings and conclusions shall be served by certified mail, return receipt requested, upon the party  
44 demanding 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 procedural rules ~~and regulations~~ to  
51 administer provisions of this section.

52 (g) The decision of the ~~board~~ 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 County  
10 and shall review appeals in accordance with the provisions governing the judicial review of  
11 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 upon motion for good cause shown by the hospital demanding  
14 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  
 21 a report on ~~its~~ his or her findings and recommendations, which is to be filed with the Governor,  
 22 the President of the Senate and the Speaker of the House of Delegates on or before ~~the first day~~  
 23 ~~of 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) above,  
17 shall notify the ~~board~~ authority of such filing, by copy thereof or notice form, as the ~~board~~ authority  
18 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. Any actions of health care providers under  
3 the ~~board's~~ authority's jurisdiction, when made in compliance with orders, directives, rules or  
4 regulations issued or promulgated by the ~~board~~ authority, shall likewise be exempt. Health care  
5 providers shall be subject to the antitrust guidelines of the federal trade commission and the  
6 department of justice.

**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-4. Creation of the West Virginia Health Information Network account;  
authorization of Health Care Authority to expend funds to support the network.**

1 (a) All moneys collected shall be deposited in a special revenue account in the State  
2 Treasury known as the West Virginia Health Information Network Account. Expenditures from the  
3 fund shall be for the purposes set forth in this article and are not authorized from collections but  
4 are to be made only in accordance with appropriation by the Legislature and in accordance with  
5 the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of  
6 article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2007,  
7 expenditures are authorized from collections rather than pursuant to appropriations by the  
8 Legislature.

9 (b) Consistent with section eight, article twenty-nine-b of this chapter, the Health Care  
10 Authority's provision of administrative, personnel, technical and other forms of support to the  
11 network is necessary to support the activities of the Health Care Authority ~~board~~ and constitutes  
12 a legitimate, lawful purpose of the Health Care Authority. ~~board~~ Therefore, the Health Care  
13 Authority is hereby authorized to expend funds from its Health Care Cost Review Fund,  
14 established under section eight, article twenty-nine-b of this chapter, to support the network's  
15 administrative, personnel and technical needs and any other network activities the Health Care  
16 Authority deems necessary.

**§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 ~~or~~  
 8 ~~regulations~~ proposed by the Health Care Authority.

**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.

NOTE: The purpose of this bill is to create the position of Executive Director of the Health Care Authority to act as the administrative head of the agency; to change the number and make-up of the board of directors and to clarify their powers and duties; to require that the

members of the board of the West Virginia Health Care Authority be employed on a part time basis and that the compensation for board members be set in statute; to eliminate rate review from the Health Care Authority powers and duties.

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