

WEST VIRGINIA LEGISLATURE

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Introduced

House Bill 4553

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MORGAN, PERDUE, REYNOLDS AND HORNBUCKLE

[Introduced February 16, 2016; referred to the
committee on Health and Human Resources.]

1 A BILL to amend and reenact §16-29B-1, §16-29B-3, §16-29B-8, §16-29B-12 and §16-29B-26 of
2 the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto
3 a new section, designated §16-29B-23a, all relating to the West Virginia Health Care
4 Authority; expanding the legislative findings and purpose; defining “Cooperative
5 agreement” and “Commercial Health Plan”; powers of the board of directors; authorizing
6 review applications for approval of proposed cooperative agreements and establishing
7 fees for the applications; when administrative hearings may be closed to the public;
8 establishing procedures for review of cooperative agreements; applicability of
9 administrative procedures act applicable and providing for protection of confidential
10 proprietary information; Legislative policy and intent, review of cooperative agreements,
11 reports required, judicial review, and reimbursement of fees and costs to board as applied
12 to cooperative agreement with other hospitals or health care providers; and exempting the
13 actions of the board of the West Virginia Health Care Authority from state and federal
14 antitrust laws.

Be it enacted by the Legislature of West Virginia:

1 That §16-29B-1, §16-29B-3, §16-29B-8, §16-29B-12 and §16-29B-26 of the Code of West
2 Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by
3 adding thereto a new section, designated §16-29B-23a, all to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-1. Legislative findings; purpose.

1 The Legislature hereby finds and declares that the health and welfare of the citizens of
2 this state is being threatened by unreasonable increases in the cost of health care services, a
3 fragmented system of health care, lack of integration and coordination of health care services,
4 unequal access to primary and preventative care, lack of a comprehensive and coordinated health
5 information system to gather and disseminate data to promote the availability of cost-effective,
6 high-quality services and to permit effective health planning and analysis of utilization, clinical

7 outcomes and cost and risk factors. In order to alleviate these threats: (1) Information on health
8 care costs must be gathered; (2) a system of cost control must be developed; and (3) an entity of
9 state government must be given authority to ensure the containment of health care costs, to
10 gather and disseminate health care information; to analyze and report on changes in the health
11 care delivery system as a result of evolving market forces, including the implementation of
12 managed care and to assure that the state health plan, certificate of need program, rate regulation
13 program and information systems serve to promote cost containment, access to care, quality of
14 services and prevention; and to evaluate and approve, where appropriate, cooperative
15 agreements among and between hospitals and other health care providers for the provision of
16 health care services that may foster improvements in the quality of health care, moderate
17 increases in cost, and improve access to needed services. Moreover, to alleviate these threats,
18 this entity of state government must establish health goals directed at improving access to care,
19 advancing health status, targeting regional health issues, promoting technological advancement,
20 ensuring accountability of the cost of care, enhancing academic engagement in regional health,
21 strengthening the workforce for health-related careers, and improving health entity collaboration
22 and regional integration, where appropriate. Therefore, the purpose of this article is to protect the
23 health and well-being of the citizens of this state by guarding against unreasonable loss of
24 economic resources as well as to ensure the continuation of appropriate access to cost-effective,
25 high-quality health care services.

§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) "Academic Medical Center" means an accredited medical school, one or more faculty
5 practice plans affiliated with the medical school and one or more affiliated hospitals which meet
6 the requirements set forth in 42 CFR 411.355(e).

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

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

14 (d) "Cooperative agreement" means an agreement among or between two or more
15 hospitals or other health care providers for the sharing, allocation, consolidation by merger or
16 other combination of assets, or referral of patients, personnel, instructional programs, support
17 services, and facilities or medical, diagnostic, or laboratory facilities or procedures or other
18 services traditionally offered by hospitals or other health care providers.

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

22 (f) "Commercial Health Plan" means any third party payor that negotiates with a party to a
23 cooperative agreement with respect to patient care services rendered by health care providers.

24 ~~(d)~~ (g) "Health care provider" means a person, partnership, corporation, facility, hospital
25 or institution licensed, certified or authorized by law to provide professional health care service in
26 this state to an individual during this individual's medical, remedial, or behavioral health care,
27 treatment or confinement. For purposes of this article, except for section twenty-three-a of this
28 article, "health care provider" shall may not include the private office practice of one or more health
29 care professionals licensed to practice in this state pursuant to the provisions of chapter thirty of
30 this code.

31 ~~(e)~~ (h) "Hospital" means a facility subject to licensure as such under the provisions of
32 article five-b of this chapter, and any acute care facility operated by the state government which

33 is primarily engaged in providing to inpatients, by or under the supervision of physicians,
34 diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled
35 or sick persons, and does not include state mental health facilities or state long-term care facilities;

36 ~~(f)~~ (i) "Person" means an individual, trust, estate, partnership, committee, corporation,
37 association or other organization such as a joint stock company, a state or political subdivision or
38 instrumentality thereof or any legal entity recognized by the state;

39 ~~(g)~~ (j) "Purchaser" means a consumer of patient care services, a natural person who is
40 directly or indirectly responsible for payment for such patient care services rendered by a health
41 care provider, but does not include third-party payers;

42 (k) "Qualified Hospital" means a teaching hospital, which is a member of an Academic
43 Medical Center and which has entered into a cooperative agreement with one or more hospitals
44 or other health care providers.

45 ~~(h)~~ (l) "Rates" means all value given or money payable to health care providers for health
46 care services, including fees, charges and cost reimbursements;

47 ~~(i)~~ (m) "Records" means accounts, books and other data related to health care costs at
48 health care facilities subject to the provisions of this article which do not include privileged medical
49 information, individual personal data, confidential information, the disclosure of which is prohibited
50 by other provisions of this code and the laws enacted by the federal government, and information,
51 the disclosure of which would be an invasion of privacy;

52 ~~(j)~~ (n) "Third-party payor" means any natural person, person, corporation or government
53 entity responsible for payment for patient care services rendered by health care providers; and

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

59 whole or half blood, spouse, ancestors and lineal descendants.

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

1 (a) In addition to the powers granted to the board elsewhere in this article, the board may:

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

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

11 (3) Apply for, receive and accept gifts, payments and other funds and advances from the
12 United States, the state or any other governmental body, agency or agencies or from any other
13 private or public corporation or person (with the exception of hospitals subject to the provisions of
14 this article, or associations representing them, doing business in the State of West Virginia, except
15 in accordance with subsection (c) of this section), and enter into agreements with respect thereto,
16 including the undertaking of studies, plans, demonstrations or projects. Any such gifts or
17 payments that may be received or any such agreements that may be entered into shall be used
18 or formulated only so as to pursue legitimate, lawful purposes of the board, and shall in no respect
19 inure to the private benefit of a board member, staff member, donor or contracting party;

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

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

27 (6) Receive and review applications for approval of proposed cooperative agreements
28 submitted by two or more hospitals or other health care providers pursuant to section twenty-
29 three-a of this article, and approve or deny such applications. The board may establish a fee
30 structure, and may assess a fee, to support its review of applications for approval of proposed
31 cooperative agreements. The amount of the fee that the board is authorized to assess the parties
32 submitting such an applications may not exceed \$50,000; and

33 ~~(6)~~ (7) Exercise, subject to limitations or restrictions herein imposed, all other powers
34 which are reasonably necessary or essential to effect the express objectives and purposes of this
35 article.

36 (b) The board shall annually prepare a budget for the next fiscal year for submission to
37 the Governor and the Legislature which shall include all sums necessary to support the activities
38 of the board and its staff.

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

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

51 (e) The board is empowered to withhold rate approvals, certificates of need and rural
52 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-12. Hearings; administrative procedures act applicable; hearings examiner;
subpoenas.**

1 (a) The board may conduct such hearings as it deems necessary for the performance of
2 its functions and shall hold hearings when required by the provisions of this chapter or upon a
3 written demand therefor by a person aggrieved by any act or failure to act by the board or by any
4 rule, regulation or order of the board. All hearings of the board shall be announced in a timely
5 manner and shall be open to the public except as may be necessary to conduct business of an
6 executive nature or for the protection of confidential proprietary information.

7 (b) All pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to
8 and govern the hearing and administrative procedures in connection with and following the
9 hearing except as specifically stated to the contrary in this article.

10 (c) Any hearing may be conducted by members of the board or by a hearing examiner
11 appointed for such purpose. Any member of the board may issue subpoenas and subpoenas
12 duces tecum which shall be issued and served pursuant to the time, fee and enforcement
13 specifications in section one, article five, chapter twenty-nine-a of this code.

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

18 (e) After any hearing, after due deliberation, and in consideration of all the testimony, the
19 evidence and the total record made, the board shall render a decision in writing. The written
20 decision shall be accompanied by findings of fact and conclusions of law as specified in section
21 three, article five, chapter twenty-nine-a of this code, and the copy of the decision and

22 accompanying findings and conclusions shall be served by certified mail, return receipt requested,
23 upon the party demanding the hearing, and upon its attorney of record, if any.

24 (f) Any interested individual, group or organization shall be recognized as affected parties
25 upon written request from the individual, group or organization. Affected parties shall have the
26 right to bring relevant evidence before the board and testify thereon. Affected parties shall have
27 equal access to records, testimony and evidence before the board, and shall have equal access
28 to the expertise of the board's staff. The board shall have authority to develop rules and
29 regulations to administer provisions of this section.

30 (g) The decision of the board is final unless reversed, vacated or modified upon judicial
31 review thereof, in accordance with the provisions of section thirteen of this article.

§16-29B-23a. Review of cooperative agreements.

1 (a) The Legislature recognizes and finds that the state's schools of medicine, affiliated
2 universities and teaching hospitals are critically important in the training of physicians and other
3 healthcare providers who practice in this state, and in providing access to and enhancing quality
4 healthcare for the citizens of this state. The Legislature further recognizes and finds that medical
5 education is enhanced when medical students, residents and fellows have access to modern
6 facilities, state of the art equipment and a full range of clinical services and that, in many instances,
7 the accessibility to facilities, equipment and clinical services can be achieved more economically
8 and efficiently through a cooperative agreement among a teaching hospital and one or more
9 hospitals or other health care providers.

10 (b) The Legislature recognizes that a hospital which is a member of an Academic Medical
11 Center may negotiate and enter into a cooperative agreement with other hospitals or health care
12 providers in the state in order to enhance or preserve medical education opportunities through
13 collaborative efforts and to ensure and maintain the economic viability of medical education in
14 this state. The Legislature further recognizes that a hospital which is a member of an Academic
15 Medical Center may enter into a cooperative agreement under which the likely benefits outweigh

16 any disadvantages attributable to a reduction in competition that may result from the proposed
17 cooperative agreement. Benefits to such a cooperative agreement may include, but are not limited
18 to, improving access to care, advancing health status, targeting regional health issues, promoting
19 technological advancement, ensuring accountability of the cost of care, enhancing academic
20 engagement in regional health, preserving and improving medical education opportunities,
21 strengthening the workforce for health-related careers, and improving health entity collaboration
22 and regional integration where appropriate. It is the policy of the Legislature to encourage
23 cooperative agreements if the likely benefits of these agreements outweigh any disadvantages
24 attributable to a reduction in competition that may result from such an agreement. To the extent
25 that cooperative agreements, or the planning and negotiations that precede cooperative
26 agreements, might be anticompetitive within the meaning and intent of state and federal antitrust
27 laws, the intent of the Legislature is to supplant competition in the state with a regulatory program
28 to permit cooperative agreements that are beneficial to citizens of the state and to medical
29 education, and to invest in the board the authority to approve or deny cooperative agreements
30 and the duty of active supervision to ensure compliance with the provisions of the cooperative
31 agreements that have been approved, the commitments made by the qualified hospital and
32 conditions imposed by the board.

33 (c) (1) A qualified hospital located within the state may submit an application for approval
34 of a proposed cooperative agreement to the board. In the application, the qualified hospital shall
35 state in detail the nature of the proposed arrangement including without limitation the goals for,
36 and methods for achieving, population health improvement, improved access to health care
37 services, improved quality, cost efficiencies, ensuring affordability of care, enhancing and
38 preserving medical education programs and, as applicable, supporting the board's goals and
39 strategic mission. If the cooperative agreement involves a combination of hospitals through
40 merger, consolidation or acquisition, a certificate of need for the project is required for the qualified
41 hospital prior to submitting an application under this section. If the cooperative agreement involves

42 a combination through merger, consolidation or acquisition of an Academic Medical Center and
43 one or more other hospitals, one of which is located within a distance of twenty-five highway miles
44 of the main campus of the medical school component of the Academic Medical Center and the
45 board determines that the combination is likely to produce anti-competitive effects due to a
46 reduction of competition, the board may require that an application under this section be submitted
47 and approved prior to the consummation of the cooperative agreement. In making this
48 determination the board shall consider the policy statements of the Federal Trade Commission.
49 A determination shall be communicated to the parties to the cooperative agreement within seven
50 days from approval of a certificate of need for the project. In any case where the board has not
51 elected to require an application under this section, the parties to a cooperative agreement may
52 then consummate the transaction following the approval of a certificate of need and the qualified
53 hospital may apply for approval of the cooperative agreement either before or after the
54 consummation. A party who has received a certificate of need prior to the enactment of this
55 provision may apply for approval of the cooperative agreement whether or not the transaction
56 contemplated thereby has been consummated. The complete record in the certificate of need
57 proceeding is considered a part of the record in the proceedings under this section and information
58 submitted by an applicant in the certificate of need proceeding may not be duplicated in
59 proceedings under this section. By submitting an application under this section the hospitals or
60 health care providers are considered to have agreed to submit to the enhanced regulation and
61 supervision required by this section if the application is approved. The board shall promptly
62 determine whether the application is complete. If the board determines that the application is not
63 complete, the board shall notify the applicant in writing of the additional items required to complete
64 the application. A copy of the complete application shall be provided to the Attorney General at
65 the same time that it is submitted to the board. If an applicant believes the materials submitted
66 contain proprietary information that is required to remain confidential, this information must be
67 clearly identified and the applicant shall submit duplicate applications, one with full information for

68 the board's use and one redacted application available for release to the public.

69 (2) The board, promptly upon receipt of a complete application, shall publish notification
70 of the application on the board's website. The public may submit written comments regarding the
71 application to the board within ten days after the notice is first published. Following the close of
72 the written comment period, the board shall, after consideration of the standards set forth in
73 subsection (e), and within thirty days of the receipt of a complete application, either: (A) Issue a
74 certificate of approval which shall contain any conditions the board deems necessary for the
75 approval; (B) deny the application; or (C) if the board determines that a public hearing is necessary
76 to make an informed decision, schedule a public hearing on the application. If the board has
77 scheduled a public hearing, the board shall issue its decision in writing within seventy-five days
78 of the date the completed application for the proposed cooperative agreement is submitted for
79 approval unless the board has requested additional information from the applicants, in which
80 event it shall have an additional fifteen days, following receipt of the supplemental information, to
81 approve or deny the proposed cooperative agreement. However, upon motion by an applicant
82 and for good cause shown the board shall endeavor to expedite its decision. Any individual, group
83 or organization who submitted written comments regarding the application and wishes to present
84 evidence at the public hearing shall request to be recognized as an affected party. The hearing
85 shall be held no later than forty-five days after receipt of the application. Notice of the hearing
86 shall be mailed to the applicants and to all persons, groups or organizations who have submitted
87 written comments on the proposed cooperative agreement. The board, no later than fifteen days
88 prior to the scheduled date of the hearing, also shall publish notice of the hearing on the board's
89 website.

90 (d) In its review of an application submitted pursuant to subsection (c), the board may
91 consider the proposed cooperative agreement and any supporting documents submitted by the
92 applicant, any written comments submitted by any person and any written or oral comments
93 submitted or evidence presented at any public hearing. The board shall review a proposed

94 cooperative agreement in consideration of the Legislature's policy to facilitate improvements in
95 patient health care outcomes and access to quality healthcare and population health improvement
96 and enhanced medical education, in accordance with the standards set forth in subsection (e).

97 (e) (1) The board shall approve a proposed cooperative agreement and issue a certificate
98 of approval if it determines that the benefits likely to result from the proposed cooperative
99 agreement outweigh the disadvantages likely to result from a reduction in competition from the
100 proposed cooperative agreement.

101 (2) In evaluating the potential benefits of a proposed cooperative agreement, the board
102 shall consider whether one or more of the following benefits may result from the proposed
103 cooperative agreement:

104 (A) Enhancement of and preservation of existing academic and clinical educational
105 programs;

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

108 (C) Enhancement of population health status consistent with the health goals established
109 by the board;

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

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

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

114 (G) Avoidance of duplication of hospital resources;

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

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

117 (3) The board's evaluation of any disadvantages attributable to any reduction in
118 competition likely to result from the proposed cooperative agreement shall include, but need not
119 be limited to, the following factors:

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

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

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

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

134 (f) The board may request from the applicants such supplemental information as the board
135 considers necessary to the assessment of whether to approve the proposed cooperative
136 agreement. The board shall consult with the Attorney General regarding his or her assessment of
137 whether to approve the proposed cooperative agreement. On the basis of the board's review of
138 the record, and any additional information received from the applicants, as well as any other data,
139 information or advice available to the board, the board shall approve the proposed cooperative
140 agreement if it finds after considering the factors in subsection (e) and any commitments made
141 by the applicant or applicants and conditions imposed by the board that the benefits likely to result
142 from the proposed cooperative agreement outweigh the disadvantages likely to result from a
143 reduction in competition from the proposed cooperative agreement. The board may reasonably
144 condition approval of the proposed cooperative agreement upon the parties' commitments to
145 achieving the improvements in population health, access to health care services, quality, and cost

146 efficiencies identified by the parties in support of their application for approval of the proposed
147 cooperative agreement as well as additional commitments made by the parties to the cooperative
148 agreement. The conditions shall be fully enforceable by the board. No condition imposed by the
149 board, however, may limit or interfere with the right of a hospital to adhere to religious or ethical
150 directives established by its governing board. The board's decision to approve or deny an
151 application constitutes a final order or decision pursuant to the West Virginia Administrative
152 Procedure Act. The board may enforce commitments and conditions imposed by the board in the
153 Circuit Court of Kanawha County or in the circuit court where the principal place of business of a
154 party to the cooperative agreement is located and the circuit courts of those counties have
155 jurisdiction to hear enforcement actions.

156 (g) If approved, the cooperative agreement is entrusted to the board for active and
157 continuing supervision to ensure compliance with the provisions of the cooperative agreement.
158 The board shall propose rules for legislative approval in accordance with article three, chapter
159 twenty-nine-a of this code designed to ensure that commitments made by applicants and
160 requirements imposed by the board with respect to prices, quality and affordability are monitored
161 and enforced. Until the legislative approval of these rules, the board shall monitor and enforce the
162 commitments to ensure that the benefits of the cooperative agreement continue to outweigh the
163 disadvantages likely to result from a reduction in competition. The parties to a cooperative
164 agreement that has been approved by the board shall report annually to the board on the extent
165 of the benefits realized and compliance with other terms and conditions of the approval. The report
166 shall describe the activities conducted pursuant to the cooperative agreement, including any
167 actions taken in furtherance of commitments made by the parties or terms imposed by the board
168 as a condition for approval of the cooperative agreement, and shall include information relating to
169 price, cost, quality, access to care and population health improvement. If an approved application
170 involves the combination of hospitals, the report shall disclose the performance of each hospital
171 with respect to a representative sample of quality metrics selected annually by the board from the

172 most recent quality metrics published by the Centers for Medicare and Medicaid Services. The
173 representative sample shall be published by the board on its website. If the average performance
174 score of the parties to the cooperative agreement in any calendar year is below the fiftieth
175 percentile for all United States hospitals with respect to such quality metrics, the board shall
176 require the parties to submit to the board and implement a corrective action plan within one
177 hundred twenty days from the commencement of the next ensuing year. If in any two consecutive
178 year period the average performance score is below the fiftieth percentile for all United State
179 hospitals, the board may require the parties to the cooperative agreement to rebate to each
180 commercial health plan or insurer with which they have contracted an amount not in excess of
181 one percent of the amount paid to them by the commercial health plan or insurer for hospital
182 services during the two year period. The amount to be rebated shall be reduced by the amount of
183 any reduction in reimbursement which may be imposed by a commercial health plan or insurer
184 under a quality incentive or awards program in which the hospital is a participant. The annual
185 report shall also disclose with respect to any reimbursement contract between a party to a
186 cooperative agreement approved hereunder and a commercial health plan or insurer entered into
187 subsequent to the consummation of the cooperative agreement the amount, if any, by which an
188 increase in the average rate of reimbursement exceeds for inpatient services for the year the
189 increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services as
190 published by the Bureau of Labor Statistics for the year and, with respect to outpatient services
191 the increase in the Consumer Price Index for all Urban Consumers for hospital outpatient services
192 for the year. If the excess above the increase in the Consumer Price Index for hospital inpatient
193 services or hospital outpatient services is two percent or greater the board may order the rebate
194 of the amount which exceeds the respective indices by two percent or more to all health plans or
195 insurers which paid the excess unless the party provides written justification of the increase
196 satisfactory to the board taking into account case mix index, outliers and extraordinarily high cost
197 outpatient procedure utilizations. The board may require the parties to a cooperative agreement

198 to supplement the report with additional information to the extent necessary to the board's active
199 and continuing supervision to ensure compliance with the cooperative agreement. The board may
200 investigate as needed, including the authority to conduct onsite inspections, to ensure compliance
201 with the cooperative agreement.

202 (h) Hospital parties to a cooperative agreement involving the combination of two or more
203 hospitals through merger, consolidation or acquisition and who seek the board's approval of the
204 agreement, shall, as part of the application for approval, agree to maintain their existing rate
205 schedules until rate modifications have been approved by the board under the methodology
206 employed by the board using either the standard or benchmarking method utilized by the board
207 prior to the commencement of the 2016 Legislative Session and thereafter to limit rate increases
208 to those approved annually by the board using this methodology.

209 (i) If subsequent to the issuance of a certificate of approval for a cooperative agreement
210 the board determines that: (1) The parties to the agreement are not complying with the terms of
211 the agreement or the terms and conditions of approval; (2) the board's approval was obtained as
212 a result of an intentional material misrepresentation; (3) the parties to the agreement have failed
213 to pay any required fee; or (4) the benefits resulting from the approved agreement no longer
214 outweigh the disadvantages attributable to the reduction in competition resulting from the
215 agreement, the board after according the parties to the agreement an opportunity to be heard,
216 may take appropriate, including revocation of the certificate of approval. All proceedings initiated
217 by the board under this article and any judicial review thereof shall be held in accordance with
218 and governed by the West Virginia Administrative Procedure Act. The board's determination is
219 final and binding. The board is specifically authorized to enforce its determination in the Circuit
220 Court of Kanawha County or the circuit court where the principal place of business of a party to
221 the cooperative agreement is located and the circuit courts of these have jurisdiction to hear
222 enforcement actions.

223 (j) If the board has reason to believe that the parties to a cooperative agreement have

224 engaged in conduct that is contrary to state policy or the public interest or failed to take action
225 required by state policy or the public interest, whether or not the benefits of the cooperative
226 agreement continue to outweigh its disadvantages, the board may initiate a proceeding to
227 determine whether to require the parties to refrain from taking that action or requiring the parties
228 to take that action. The board's determination is final and binding. The board is specifically
229 authorized to enforce its determination in the Circuit Court of Kanawha County or the circuit court
230 where the principal place of business of a party to the cooperative agreement is located and the
231 circuit courts of those counties have jurisdiction to hear the enforcement actions.

232 (k) The board shall maintain on file all cooperative agreements that the board has
233 approved, including any conditions imposed by the board. Any party to a cooperative agreement
234 that terminates its participation in the cooperative agreement shall file a notice of termination with
235 the board within thirty days after termination. No hospital, which is a party to a cooperative
236 agreement for which approval is required by this article, which has not been approved by the
237 board or with respect to which approval has been revoked or terminated may knowingly bill or
238 charge for health services resulting from or associated with the cooperative agreement.

239 (l) The board is entitled to reimbursement from the parties seeking approval of a
240 cooperative agreement for all reasonable and actual costs, not to exceed \$75,000, incurred by
241 the board in its review and approval of any cooperative agreement approved pursuant to this
242 article. In addition, the board may assess an annual fee, in an amount that does not exceed
243 \$75,000, for the supervision of any cooperative agreement approved pursuant to this article and
244 to support the implementation and administration of the provisions of this article.

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

1 Actions of the board shall be are exempt from antitrust action under state and federal
2 antitrust laws ~~as provided in section five, article eighteen, chapter forty seven of this code.~~ Any
3 actions of hospitals and other health care providers under the board's jurisdiction, when made in
4 compliance with orders, directives, rules or ~~regulations~~ approvals issued or promulgated by the

5 board, ~~shall likewise be~~ are also exempt. ~~Health care providers shall be subject to the antitrust~~
6 ~~guidelines of the federal trade commission and the department of justice~~ It is the intention of the
7 Legislature that this chapter shall also immunize cooperative agreements approved and
8 supervised by the board and activities conducted pursuant thereto from challenge or scrutiny
9 under both state and federal antitrust law.

NOTE: The purpose of this bill is to expand the authority of the West Virginia Health Care Authority and its board to include regulation of cooperative agreement with other hospitals or health care providers. The bill expands legislative findings and purpose relating to cooperative agreement with other hospitals or health care providers and defines "Cooperative agreement" and "Commercial Health Plan". The bill increases the powers of the board of directors by authorizing review of applications for approval of proposed cooperative agreements and establishes fees for the applications. The bill states when administrative hearings may be closed to the public, establishes procedures for review of cooperative agreements and states the applicability of administrative procedures act in reviewing applications for approval of the establishment of a cooperative agreement between hospitals or applicable and provides for protection of confidential proprietary information in these proceedings. Legislative policy and intent is stated as applying to the encouragement for cooperative, collaborative and integrative arrangements, including mergers and acquisitions among hospitals and among health care providers who might otherwise be competitors. The bill provides for review of cooperative agreements by the board, requires reports to be submitted by parties to a cooperative agreement and provides for, judicial review of actions of the board relating to approval or denial of cooperative agreements. The bill authorizes reimbursement of fees and costs to the board as applied to cooperative agreement with other hospitals or health care providers. And the bill exempts the actions of the board of the West Virginia Health Care Authority from state and federal antitrust laws.

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