WEST VIRGINIA LEGISLATURE

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Introduced

House Bill 4553

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[Introduced February 16, 2016; referred to the
committee on Health and Human Resources.]
A BILL to amend and reenact §16-29B-1, §16-29B-3, §16-29B-8, §16-29B-12 and §16-29B-26 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-29B-23a, all relating to the West Virginia Health Care Authority; expanding the legislative findings and purpose; defining “Cooperative agreement” and “Commercial Health Plan”; powers of the board of directors; authorizing review applications for approval of proposed cooperative agreements and establishing fees for the applications; when administrative hearings may be closed to the public; establishing procedures for review of cooperative agreements; applicability of administrative procedures act applicable and providing for protection of confidential proprietary information; Legislative policy and intent, review of cooperative agreements, reports required, judicial review, and reimbursement of fees and costs to board as applied to cooperative agreement with other hospitals or health care providers; and exempting the actions of the board of the West Virginia Health Care Authority from state and federal antitrust laws.

Be it enacted by the Legislature of West Virginia:

That §16-29B-1, §16-29B-3, §16-29B-8, §16-29B-12 and §16-29B-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by 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.

The Legislature hereby finds and declares that the health and welfare of the citizens of this state is being threatened by unreasonable increases in the cost of health care services, a fragmented system of health care, lack of integration and coordination of health care services, unequal access to primary and preventative care, lack of a comprehensive and coordinated health information system to gather and disseminate data to promote the availability of cost-effective, high-quality services and to permit effective health planning and analysis of utilization, clinical
outcomes and cost and risk factors. In order to alleviate these threats: (1) Information on health
care costs must be gathered; (2) a system of cost control must be developed; and (3) an entity of
state government must be given authority to ensure the containment of health care costs, to
gather and disseminate health care information; to analyze and report on changes in the health
care delivery system as a result of evolving market forces, including the implementation of
managed care and to assure that the state health plan, certificate of need program, rate regulation
program and information systems serve to promote cost containment, access to care, quality of
services and prevention; and to evaluate and approve, where appropriate, cooperative
agreements among and between hospitals and other health care providers for the provision of
health care services that may foster improvements in the quality of health care, moderate
increases in cost, and improve access to needed services. Moreover, to alleviate these threats,
this entity of state government must establish health goals directed at improving access to care,
advancing health status, targeting regional health issues, promoting technological advancement,
ensuring accountability of the cost of care, enhancing academic engagement in regional health,
strengthening the workforce for health-related careers, and improving health entity collaboration
and regional integration, where appropriate. Therefore, the purpose of this article is to protect the
health and well-being of the citizens of this state by guarding against unreasonable loss of
economic resources as well as to ensure the continuation of appropriate access to cost-effective,
high-quality health care services.

§16-29B-3. Definitions.

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

As used in this article, unless a different meaning clearly appears from the context:
(a) "Academic Medical Center" means an accredited medical school, one or more faculty
practice plans affiliated with the medical school and one or more affiliated hospitals which meet
the requirements set forth in 42 CFR 411.355(e).
"Charges" means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article: Provided, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building commissioner and subject to the approval of the Legislature;
(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board's functions and duties; and

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

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

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

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

(d) Each hospital's assessment shall be treated as an allowable expense by the board.
(e) The board is empowered to withhold rate approvals, certificates of need and rural health system loans and grants if any such fees remain unpaid, unless exempted under subsection (g), section four, article two-d of this chapter.

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

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

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

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

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

(e) After any hearing, after due deliberation, and in consideration of all the testimony, the evidence and the total record made, the board shall render a decision in writing. The written decision shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and the copy of the decision and
accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the party demanding the hearing, and upon its attorney of record, if any.

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

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

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

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

(b) The Legislature recognizes that a hospital which is a member of an Academic Medical Center may negotiate and enter into a cooperative agreement with other hospitals or health care providers in the state in order to enhance or preserve medical education opportunities through collaborative efforts and to ensure and maintain the economic viability of medical education in this state. The Legislature further recognizes that a hospital which is a member of an Academic Medical Center may enter into a cooperative agreement under which the likely benefits outweigh
any disadvantages attributable to a reduction in competition that may result from the proposed cooperative agreement. Benefits to such a cooperative agreement may include, but are not limited to, improving access to care, advancing health status, targeting regional health issues, promoting technological advancement, ensuring accountability of the cost of care, enhancing academic engagement in regional health, preserving and improving medical education opportunities, strengthening the workforce for health-related careers, and improving health entity collaboration and regional integration where appropriate. It is the policy of the Legislature to encourage cooperative agreements if the likely benefits of these agreements outweigh any disadvantages attributable to a reduction in competition that may result from such an agreement. To the extent that cooperative agreements, or the planning and negotiations that precede cooperative agreements, might be anticompetitive within the meaning and intent of state and federal antitrust laws, the intent of the Legislature is to supplant competition in the state with a regulatory program to permit cooperative agreements that are beneficial to citizens of the state and to medical education, and to invest in the board the authority to approve or deny cooperative agreements and the duty of active supervision to ensure compliance with the provisions of the cooperative agreements that have been approved, the commitments made by the qualified hospital and conditions imposed by the board.

(c) (1) A qualified hospital located within the state may submit an application for approval of a proposed cooperative agreement to the board. In the application, the qualified hospital shall state in detail the nature of the proposed arrangement including without limitation the goals for, and methods for achieving, population health improvement, improved access to health care services, improved quality, cost efficiencies, ensuring affordability of care, enhancing and preserving medical education programs and, as applicable, supporting the board’s goals and strategic mission. If the cooperative agreement involves a combination of hospitals through merger, consolidation or acquisition, a certificate of need for the project is required for the qualified hospital prior to submitting an application under this section. If the cooperative agreement involves
a combination through merger, consolidation or acquisition of an Academic Medical Center and one or more other hospitals, one of which is located within a distance of twenty-five highway miles of the main campus of the medical school component of the Academic Medical Center and the board determines that the combination is likely to produce anti-competitive effects due to a reduction of competition, the board may require that an application under this section be submitted and approved prior to the consummation of the cooperative agreement. In making this determination the board shall consider the policy statements of the Federal Trade Commission.

A determination shall be communicated to the parties to the cooperative agreement within seven days from approval of a certificate of need for the project. In any case where the board has not elected to require an application under this section, the parties to a cooperative agreement may then consummate the transaction following the approval of a certificate of need and the qualified hospital may apply for approval of the cooperative agreement either before or after the consummation. A party who has received a certificate of need prior to the enactment of this provision may apply for approval of the cooperative agreement whether or not the transaction contemplated thereby has been consummated. The complete record in the certificate of need proceeding is considered a part of the record in the proceedings under this section and information submitted by an applicant in the certificate of need proceeding may not be duplicated in proceedings under this section. By submitting an application under this section the hospitals or health care providers are considered to have agreed to submit to the enhanced regulation and supervision required by this section if the application is approved. The board shall promptly determine whether the application is complete. If the board determines that the application is not complete, the board shall notify the applicant in writing of the additional items required to complete the application. A copy of the complete application shall be provided to the Attorney General at the same time that it is submitted to the board. If an applicant believes the materials submitted contain proprietary information that is required to remain confidential, this information must be clearly identified and the applicant shall submit duplicate applications, one with full information for
the board’s use and one redacted application available for release to the public.

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

(d) In its review of an application submitted pursuant to subsection (c), the board may consider the proposed cooperative agreement and any supporting documents submitted by the applicant, any written comments submitted by any person and any written or oral comments submitted or evidence presented at any public hearing. The board shall review a proposed
cooperative agreement in consideration of the Legislature's policy to facilitate improvements in patient health care outcomes and access to quality healthcare and population health improvement and enhanced medical education, in accordance with the standards set forth in subsection (e).

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

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

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

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

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

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

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

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

(G) Avoidance of duplication of hospital resources;

(H) Participation in the state Medicaid program; and

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

(3) The board’s evaluation of any disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement shall include, but need not be limited to, the following factors:
(A) The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations, or other health care payors to negotiate reasonable payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;

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

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

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

(f) The board may request from the applicants such supplemental information as the board considers necessary to the assessment of whether to approve the proposed cooperative agreement. The board shall consult with the Attorney General regarding his or her assessment of whether to approve the proposed cooperative agreement. On the basis of the board’s review of the record, and any additional information received from the applicants, as well as any other data, information or advice available to the board, the board shall approve the proposed cooperative agreement if it finds after considering the factors in subsection (e) and any commitments made by the applicant or applicants and conditions imposed by the board that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement. The board may reasonably condition approval of the proposed cooperative agreement upon the parties’ commitments to achieving the improvements in population health, access to health care services, quality, and cost.
efficiencies identified by the parties in support of their application for approval of the proposed cooperative agreement as well as additional commitments made by the parties to the cooperative agreement. The conditions shall be fully enforceable by the board. No condition imposed by the board, however, may limit or interfere with the right of a hospital to adhere to religious or ethical directives established by its governing board. The board’s decision to approve or deny an application constitutes a final order or decision pursuant to the West Virginia Administrative Procedure Act. The board may enforce commitments and conditions imposed by the board in the Circuit Court of Kanawha County or in the circuit court where the principal place of business of a party to the cooperative agreement is located and the circuit courts of those counties have jurisdiction to hear enforcement actions.

(g) If approved, the cooperative agreement is entrusted to the board for active and continuing supervision to ensure compliance with the provisions of the cooperative agreement. The board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code designed to ensure that commitments made by applicants and requirements imposed by the board with respect to prices, quality and affordability are monitored and enforced. Until the legislative approval of these rules, the board shall monitor and enforce the commitments to ensure that the benefits of the cooperative agreement continue to outweigh the disadvantages likely to result from a reduction in competition. The parties to a cooperative agreement that has been approved by the board shall report annually to the board on the extent of the benefits realized and compliance with other terms and conditions of the approval. The report shall describe the activities conducted pursuant to the cooperative agreement, including any actions taken in furtherance of commitments made by the parties or terms imposed by the board as a condition for approval of the cooperative agreement, and shall include information relating to price, cost, quality, access to care and population health improvement. If an approved application involves the combination of hospitals, the report shall disclose the performance of each hospital with respect to a representative sample of quality metrics selected annually by the board from the
most recent quality metrics published by the Centers for Medicare and Medicaid Services. The representative sample shall be published by the board on its website. If the average performance score of the parties to the cooperative agreement in any calendar year is below the fiftieth percentile for all United States hospitals with respect to such quality metrics, the board shall require the parties to submit to the board and implement a corrective action plan within one hundred twenty days from the commencement of the next ensuing year. If in any two consecutive year period the average performance score is below the fiftieth percentile for all United States hospitals, the board may require the parties to the cooperative agreement to rebate to each commercial health plan or insurer with which they have contracted an amount not in excess of one percent of the amount paid to them by the commercial health plan or insurer for hospital services during the two year period. The amount to be rebated shall be reduced by the amount of any reduction in reimbursement which may be imposed by a commercial health plan or insurer under a quality incentive or awards program in which the hospital is a participant. The annual report shall also disclose with respect to any reimbursement contract between a party to a cooperative agreement approved hereunder and a commercial health plan or insurer entered into subsequent to the consummation of the cooperative agreement the amount, if any, by which an increase in the average rate of reimbursement exceeds for inpatient services for the year the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services as published by the Bureau of Labor Statistics for the year and, with respect to outpatient services the increase in the Consumer Price Index for all Urban Consumers for hospital outpatient services for the year. If the excess above the increase in the Consumer Price Index for hospital inpatient services or hospital outpatient services is two percent or greater the board may order the rebate of the amount which exceeds the respective indices by two percent or more to all health plans or insurers which paid the excess unless the party provides written justification of the increase satisfactory to the board taking into account case mix index, outliers and extraordinarily high cost outpatient procedure utilizations. The board may require the parties to a cooperative agreement
to supplement the report with additional information to the extent necessary to the board’s active
and continuing supervision to ensure compliance with the cooperative agreement. The board may
investigate as needed, including the authority to conduct onsite inspections, to ensure compliance
with the cooperative agreement.

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

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

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

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

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

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

Actions of the board shall be exempt from antitrust action under state and federal antitrust laws as provided in section five, article eighteen, chapter forty-seven of this code. Any actions of hospitals and other health care providers under the board’s jurisdiction, when made in compliance with orders, directives, rules or regulations approvals issued or promulgated by the
board, shall likewise be exempt. Health care providers shall be subject to the antitrust guidelines of the federal trade commission and the department of justice. It is the intention of the Legislature that this chapter shall also immunize cooperative agreements approved and supervised by the board and activities conducted pursuant thereto from challenge or scrutiny 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.