

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2376

BY DELEGATES ELLINGTON AND SUMMERS

[Originating in the Committee on Government

Organization; March 24, 2017]

1 A BILL to amend and reenact §5F-1-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §9-5-11b and §9-
3 5-22 of said code; to amend said code by adding thereto a new section, designated §9-
4 10-1; to amend and reenact §11-27-38 of said code; to amend and reenact §11B-2-15 of
5 said code; to amend and reenact §16-3-5 of said code; to amend and reenact §16-5S-7
6 of said code; to amend and reenact §33-25G-2 of said code; to amend and reenact §49-
7 2-125 of said code; and to amend and reenact §60A-9-5 of said code; all relating to the
8 organizational structure of state government; providing that the Bureau for Medical
9 Services be renamed the Department of Medical Services with the Commissioner of the
10 Bureau for Medical Services becoming the Secretary of the Department of Medical
11 Services; providing that the department continue to operate as currently configured as the
12 Bureau for Medical Services with the structure of the Department of Health and Human
13 Resources for administrative support, interagency cooperation and program support;
14 removing the Human Rights Commission, Division of Human Services, Bureau for Public
15 Health, Office of Emergency Medical Services and the Emergency Medical Service
16 Advisory Council, Health Care Authority, Commission on Mental Retardation, Women's
17 Commission and the Child Support Enforcement Division from administration by the
18 Department of Administration; providing that the Bureau for Public Health, The Bureau for
19 Child Support Enforcement, The Bureau of Children and Families, The Office of the
20 Inspector General, The Health Care Authority, The State Commission on Intellectual
21 Disability, The Women's Commission, The Commission for the Deaf and Hard of Hearing;
22 and the James H. "Tiger" Morton Catastrophic Illness Commission are to be administered
23 as a part of the Department of Health and Human Resources; providing that the Bureau
24 of Medical Services and The Children's Health Insurance Agency are incorporated in and
25 administered as a part of the Department of Medical Services; and making technical

26 changes in various chapters of the code to reflect the creation of the Department of
27 Medical Services.

Be it enacted by the Legislature of West Virginia:

1 That §5F-1-2 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted, that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; that §9-5-11b and
3 §9-5-22 of said code be amended and reenacted; that said code be amended by adding thereto
4 a new section designated, §9-10-1; that §11-27-38 of said code be amended and reenacted; that
5 11B-2-15 of said code be amended and reenacted; that §16-3-5 of said code be amended and
6 reenacted; that §16-5S-7 of said code be amended and reenacted; that §33-25G-2 of said code
7 be amended and reenacted; that §49-2-125 of said code be amended and reenacted; and that
8 §60A-9-5 of said code be amended and reenacted, all to read as follows:

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

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

1 (a) There are created, within the executive branch of the state government, the following
2 departments:

- 3 (1) Department of Administration;
- 4 (2) Department of Education and the Arts;
- 5 (3) Department of Environmental Protection;
- 6 (4) Department of Health and Human Resources;
- 7 (5) Department of Military Affairs and Public Safety;
- 8 (6) Department of Revenue;
- 9 (7) Department of Transportation;
- 10 (8) Department of Commerce; ~~and~~

11 (9) ~~Effective July 1, 2011,~~ Department of Veterans' Assistance; and

12 (10) Department of Medical Services.

13 (b) Each department will be headed by a secretary appointed by the Governor with the
14 advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

15 (c) The Commissioner for the Bureau of Medical Services is hereby designated as the
16 Secretary for the Department of Medical Services, upon the effective date of this section.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all of the allied, advisory, affiliated or
2 related entities and funds associated with any agency or board, are incorporated in and
3 administered as a part of the Department of Administration:

4 (1) Building Commission provided in article six, chapter five of this code;

5 (2) Public Employees Insurance Agency provided in article sixteen, chapter five of this
6 code;

7 (3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this
8 code;

9 (4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of
10 this code;

11 (5) West Virginia Public Employees Grievance Board provided in article three, chapter six-
12 c of this code;

13 (6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-
14 nine of this code;

15 (7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this
16 code;

17 (8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this
18 code;

19 (9) Division of Personnel provided in article six, chapter twenty-nine of this code;

20 (10) The West Virginia Ethics Commission provided in article two, chapter six-b of this
21 code;

22 (11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this
23 code; and

24 (12) Real Estate Division provided in article ten, chapter five-a of this code.

25 (b) The following agencies and boards, including all of the allied, advisory, affiliated or
26 related entities and funds associated with any agency or board, are incorporated in and
27 administered as a part of the Department of Commerce:

28 (1) Division of Labor provided in article one, chapter twenty-one of this code, which
29 includes:

30 (A) Occupational Safety and Health Review Commission provided in article three-a,
31 chapter twenty-one of this code; and

32 (B) Board of Manufactured Housing Construction and Safety provided in article nine,
33 chapter twenty-one of this code.

34 (2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-
35 two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety
36 and Training for purposes of administrative support and liaison with the Office of the Governor:

37 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
38 Committee provided in article six, chapter twenty-two-a of this code;

39 (B) Board of Miner Training, Education and Certification provided in article seven, chapter
40 twenty-two-a of this code; and

41 (C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this
42 code.

43 (3) The West Virginia Development Office provided in article two, chapter five-b of this
44 code;

45 (4) Division of Natural Resources and Natural Resources Commission provided in article
46 one, chapter twenty of this code;

47 (5) Division of Forestry provided in article one-a, chapter nineteen of this code;

48 (6) Geological and Economic Survey provided in article two, chapter twenty-nine of this
49 code; and

50 (7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

51 (A) Division of Unemployment Compensation;

52 (B) Division of Employment Service;

53 (C) Division of Workforce Development; and

54 (D) Division of Research, Information and Analysis.

55 (8) Division of Energy provided in article two-f, chapter five-b of this code.

56 (9) Division of Tourism Commission provided in article two-h, chapter five-b of this code.

57 (c) The Economic Development Authority provided in article fifteen, chapter thirty-one of
58 this code is continued as an independent agency within the executive branch.

59 (d) The Water Development Authority and the Water Development Authority Board
60 provided in article one, chapter twenty-two-c of this code is continued as an independent agency
61 within the executive branch.

62 (e) The following agencies and boards, including all of the allied, advisory and affiliated
63 entities, are transferred to the Department of Environmental Protection for purposes of
64 administrative support and liaison with the office of the Governor:

65 (1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

66 (2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this
67 code;

68 (3) Environmental Quality Board, or its successor board, provided in article three, chapter
69 twenty-two-b of this code;

70 (4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

71 (5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-
72 two-c of this code;

73 (6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this
74 code; and

75 (7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c
76 of this code.

77 (f) The following agencies and boards, including all of the allied, advisory, affiliated or
78 related entities and funds associated with any agency or board, are incorporated in and
79 administered as a part of the Department of Education and the Arts:

80 (1) Library Commission provided in article one, chapter ten of this code;

81 (2) Division of Culture and History provided in article one, chapter twenty-nine of this code;

82 and

83 (3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this
84 code.

85 (g) The Educational Broadcasting Authority provided in article five, chapter ten of this code
86 is part of the Department of Education and the Arts for the purposes of administrative support and
87 liaison with the office of the Governor.

88 (h) The following agencies and boards, including all of the allied, advisory, affiliated or
89 related entities and funds associated with any agency or board, are incorporated in and
90 administered as a part of the Department of Health and Human Resources:

91 ~~(1) Human Rights Commission provided in article eleven, chapter five of this code;~~

92 ~~(2) Division of Human Services provided in article two, chapter nine of this code;~~

93 ~~(3) Bureau for Public Health provided in article one, chapter sixteen of this code;~~

94 ~~(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory
95 Council provided in article four-c, chapter sixteen of this code;~~

96 ~~(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;~~

97 ~~(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of~~
98 ~~this code;~~

99 ~~(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and~~

100 ~~(8) The Child Support Enforcement Division provided in chapter forty-eight of this code~~

101 (1) The Bureau for Behavioral Health and Health Facilities;

102 (2) The Bureau for Public Health provided in article one, chapter sixteen of this code;

103 (3) The Bureau for Child Support Enforcement provided in chapter forty-eight of this code

104 (4) The Bureau of Children and Families;

105 (5) The Office of the Inspector General;

106 (6) The Health Care Authority provided in article twenty-nine-b, chapter sixteen of this
107 code;

108 (7) The State Commission on Intellectual Disability provided in article fifteen, chapter
109 twenty-nine of this code;

110 (8) The Women's Commission provided in article twenty, chapter twenty-nine of this code;

111 (9) The Commission for the Deaf and Hard of Hearing;

112 (10) The James H. "Tiger" Morton Catastrophic Illness Commission; and

113 (11) Human Rights Commission provided in article eleven, chapter five of this code.

114 (i) The following agencies and boards, including all of the allied, advisory, affiliated or
115 related entities and funds associated with any agency or board, are incorporated in and
116 administered as a part of the Department of Military Affairs and Public Safety:

117 (1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

118 (2) Armory Board provided in article six, chapter fifteen of this code;

119 (3) Military Awards Board provided in article one-g, chapter fifteen of this code;

120 (4) West Virginia State Police provided in article two, chapter fifteen of this code;

121 (5) Division of Homeland Security and Emergency Management and Disaster Recovery
122 Board provided in article five, chapter fifteen of this code and Emergency Response Commission
123 provided in article five-a of said chapter;

124 (6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

125 (7) Division of Justice and Community Services provided in article nine-a, chapter fifteen
126 of this code;

127 (8) Division of Corrections provided in chapter twenty-five of this code;

128 (9) Fire Commission provided in article three, chapter twenty-nine of this code;

129 (10) Regional Jail and Correctional Facility Authority provided in article twenty, chapter
130 thirty-one of this code; and

131 (11) Board of Probation and Parole provided in article twelve, chapter sixty-two of this
132 code.

133 (j) The following agencies and boards, including all of the allied, advisory, affiliated or
134 related entities and funds associated with any agency or board, are incorporated in and
135 administered as a part of the Department of Revenue:

136 (1) Tax Division provided in chapter eleven of this code;

137 (2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

138 (3) Lottery Commission and position of Lottery Director provided in article twenty-two,
139 chapter twenty-nine of this code;

140 (4) Insurance Commissioner provided in article two, chapter thirty-three of this code;

141 (5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen,
142 chapter eleven of this code and article two, chapter sixty of this code;

143 (6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-
144 a of this code;

145 (7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

146 (8) Division of Banking provided in article two, chapter thirty-one-a of this code;

147 (9) The State Budget Office provided in article two of this chapter;

148 (10) The Municipal Bond Commission provided in article three, chapter thirteen of this
149 code;

150 (11) The office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

151 (12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this
152 code.

153 (k) The following agencies and boards, including all of the allied, advisory, affiliated or
154 related entities and funds associated with any agency or board, are incorporated in and
155 administered as a part of the Department of Transportation:

156 (1) Division of Highways provided in article two-a, chapter seventeen of this code;

157 (2) Parkways, Economic Development and Tourism Authority provided in article sixteen-
158 a, chapter seventeen of this code;

159 (3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

160 (4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this
161 code;

162 (5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

163 (6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

164 (7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code.

165 (l) ~~Effective July 1, 2011,~~ The Veterans' Council provided in article one, chapter nine-a of
166 this code, including all of the allied, advisory, affiliated or related entities and funds associated
167 with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

168 (m) The following agencies and boards, including all of the allied, advisory, affiliated or
169 related entities and funds associated with any agency or board, are incorporated in and
170 administered as a part of the Department of Medical Services:

171 (1) The Bureau of Medical Services; and

172 (2) The Children's Health Insurance Agency provided in article sixteen-b; chapter five.

173 ~~(m)~~ (n) Except for powers, authority and duties that have been delegated to the secretaries
174 of the departments by the provisions of section two of this article, the position of administrator and
175 the powers, authority and duties of each administrator and agency are not affected by the
176 enactment of this chapter.

177 ~~(n)~~ (o) Except for powers, authority and duties that have been delegated to the secretaries
178 of the departments by the provisions of section two of this article, the existence, powers, authority
179 and duties of boards and the membership, terms and qualifications of members of the boards are
180 not affected by the enactment of this chapter. All boards that are appellate bodies or are
181 independent decision makers shall not have their appellate or independent decision-making
182 status affected by the enactment of this chapter.

183 ~~(o)~~ (p) Any department previously transferred to and incorporated in a department by prior
184 enactment of this section means a division of the appropriate department. Wherever reference is
185 made to any department transferred to and incorporated in a department created in section two,
186 article one of this chapter, the reference means a division of the appropriate department and any
187 reference to a division of a department so transferred and incorporated means a section of the
188 appropriate division of the department.

189 ~~(p)~~ (q) When an agency, board or commission is transferred under a bureau or agency
190 other than a department headed by a secretary pursuant to this section, that transfer is solely for
191 purposes of administrative support and liaison with the office of the Governor, a department
192 secretary or a bureau. Nothing in this section extends the powers of department secretaries under
193 section two of this article to any person other than a department secretary and nothing limits or
194 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this
195 code.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to the contrary, the secretary of each
2 department shall have plenary power and authority within and for the department to:

3 (1) Employ and discharge within the office of the secretary employees as may be
4 necessary to carry out the functions of the secretary, which employees shall serve at the will and
5 pleasure of the secretary;

6 (2) Cause the various agencies and boards to be operated effectively, efficiently and
7 economically and develop goals, objectives, policies and plans that are necessary or desirable
8 for the effective, efficient and economical operation of the department;

9 (3) Eliminate or consolidate positions, other than positions of administrators or positions
10 of board members and name a person to fill more than one position;

11 (4) Transfer permanent state employees between departments in accordance with the
12 provisions of section seven of this article;

13 (5) Delegate, assign, transfer or combine responsibilities or duties to or among employees,
14 other than administrators or board members;

15 (6) Reorganize internal functions or operations;

16 (7) Formulate comprehensive budgets for consideration by the Governor and transfer
17 within the department funds appropriated to the various agencies of the department which are not
18 expended due to cost savings resulting from the implementation of the provisions of this chapter:
19 *Provided*, That no more than twenty-five percent of the funds appropriated to any one agency or
20 board may be transferred to other agencies or boards within the department: *Provided, however*,
21 That no funds may be transferred from a special revenue account, dedicated account, capital
22 expenditure account or any other account or funds specifically exempted by the Legislature from
23 transfer, except that the use of appropriations from the State Road Fund transferred to the office
24 of the Secretary of the Department of Transportation is not a use other than the purpose for which
25 the funds were dedicated and is permitted: *Provided further*, That if the Legislature by subsequent
26 enactment consolidates agencies, boards or functions, the appropriate secretary may transfer the
27 funds formerly appropriated to the agency, board or function in order to implement consolidation.
28 The authority to transfer funds under this section shall expire on June 30, 2010;

29 (8) Enter into contracts or agreements requiring the expenditure of public funds and
30 authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the
31 powers granted to the secretary to enter into contracts or agreements and to make expenditures
32 or obligations of public funds under this provision shall not exceed or be interpreted as authority
33 to exceed the powers granted by the Legislature to the various commissioners, directors or board
34 members of the various departments, agencies or boards that comprise and are incorporated into
35 each secretary's department under this chapter;

36 (9) Acquire by lease or purchase property of whatever kind or character and convey or
37 dispose of any property of whatever kind or character as authorized by law: *Provided*, That the
38 powers granted to the secretary to lease, purchase, convey or dispose of such property shall be
39 exercised in accordance with the provisions of articles three, ten and eleven, chapter five-a of this
40 code: *Provided, however*, That the powers granted to the secretary to lease, purchase, convey or
41 dispose of such property shall not exceed or be interpreted as authority to exceed the powers
42 granted by the Legislature to the various commissioners, directors or board members of the
43 various departments, agencies or boards that comprise and are incorporated into each secretary's
44 department under this chapter;

45 (10) Conduct internal audits;

46 (11) Supervise internal management;

47 (12) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this
48 code, to implement and make effective the powers, authority and duties granted and imposed by
49 the provisions of this chapter in accordance with the provisions of chapter twenty-nine-a of this
50 code;

51 (13) Grant or withhold written consent to the proposal of any rule, as defined in section
52 two, article one, chapter twenty-nine-a of this code, by any administrator, agency or board within
53 the department. Without written consent, no proposal for a rule shall have any force or effect;

54 (14) Delegate to administrators the duties of the secretary as the secretary may deem
55 appropriate, from time to time, to facilitate execution of the powers, authority and duties delegated
56 to the secretary; and

57 (15) Take any other action involving or relating to internal management not otherwise
58 prohibited by law.

59 (b) The secretaries of the departments hereby created shall engage in a comprehensive
60 review of the practices, policies and operations of the agencies and boards within their
61 departments to determine the feasibility of cost reductions and increased efficiency which may be
62 achieved therein, including, but not limited to, the following:

63 (1) The elimination, reduction and restriction of the state's vehicle or other transportation
64 fleet;

65 (2) The elimination, reduction and restriction of state government publications, including
66 annual reports, informational materials and promotional materials;

67 (3) The termination or rectification of terms contained in lease agreements between the
68 state and private sector for offices, equipment and services;

69 (4) The adoption of appropriate systems for accounting, including consideration of an
70 accrual basis financial accounting and reporting system;

71 (5) The adoption of revised procurement practices to facilitate cost-effective purchasing
72 procedures, including consideration of means by which domestic businesses may be assisted to
73 compete for state government purchases; and

74 (6) The computerization of the functions of the state agencies and boards.

75 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the
76 powers granted to the secretaries herein shall be exercised by the secretary if to do so would
77 violate or be inconsistent with the provisions of any federal law or regulation, any federal-state
78 program or federally delegated program or jeopardize the approval, existence or funding of any
79 program.

80 (d) The layoff and recall rights of employees within the classified service of the state as
81 provided in subsections (5) and (6), section ten, article six, chapter twenty-nine of this code shall
82 be limited to the organizational unit within the agency or board and within the occupational group
83 established by the classification and compensation plan for the classified service of the agency
84 or board in which the employee was employed prior to the agency or board's transfer or
85 incorporation into the department: *Provided*, That the employee shall possess the qualifications
86 established for the job class. The duration of recall rights provided in this subsection shall be
87 limited to two years or the length of tenure, whichever is less. Except as provided in this
88 subsection, nothing contained in this section shall be construed to abridge the rights of employees
89 within the classified service of the state as provided in sections ten and ten-a, article six, chapter
90 twenty-nine of this code.

91 ~~(e) Notwithstanding any other provision of this code to the contrary, the secretary of each~~
92 ~~department with authority over programs which have an impact on the delivery of health care~~
93 ~~services in the state or are payors for health care services or are payors for prescription drugs,~~
94 ~~including, but not limited to, the Public Employees Insurance Agency, the Department of Health~~
95 ~~and Human Resources, the Bureau of Senior Services, the Children's Health Insurance Program,~~
96 ~~the Health Care Authority, the Office of the Insurance Commissioner, the Division of Corrections,~~
97 ~~the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, state~~
98 ~~colleges and universities, public hospitals, state or local institutions including nursing homes and~~
99 ~~veterans' homes, the Division of Rehabilitation Services, public health departments, the Bureau~~
100 ~~for Medical Services and other programs, which have an impact on the delivery of health care~~
101 ~~services or are payors for health care services or are payors for prescription drugs, in West~~
102 ~~Virginia shall cooperate with the Governor's Office of Health Enhancement and Lifestyle Planning~~
103 ~~established pursuant to article twenty-nine-h, chapter sixteen of this code for the purpose of~~
104 ~~improving the health care delivery services in West Virginia for any program over which they have~~
105 ~~authority~~

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11b. Release of information.

1 (a) All recipients of medical assistance under the Medicaid program are considered to
2 have authorized all third parties, including, but not limited to, insurance companies and providers
3 of medical care, to release to the Department of Health and Human Resources information
4 needed by the department to secure or enforce its rights as assignee under this chapter.

5 (b) As a condition of doing business in the state, health insurers, including self-insured
6 plans, group health plans as defined in §6074(a) of the Employee Retirement Income Security
7 Act of 1974, service benefit plans, third-party administrators, managed care organizations,
8 pharmacy benefit managers or other parties that are by statute, contract or agreement, legally
9 responsible for payment of a claim for a health care item or service are required to comply with
10 the following:

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

20 (2) Accept the right of the ~~Bureau for~~ Department of Medical Services of recovery and the
21 assignment to the state of any right of an individual or other entity to payment from the party for

22 an item or service for which payment has been made by the ~~Bureau for~~ Department of Medical
23 Services;

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

27 (4) Accept a claim submitted by the ~~Bureau for~~ Department of Medical Services regardless
28 of the date of submission of the claim, the type or format of the claim form, lack of preauthorization
29 or the failure to present proper documentation at the point-of-sale that is the basis of the claim:
30 *Provided*, That the claim is submitted by the ~~Bureau for~~ Department of Medical Services within
31 the three-year period beginning on the date on which the item or service was furnished and any
32 action by the Bureau for Medical Services to enforce its right with respect to the claim is
33 commenced within six years of the ~~Bureau for~~ Department of Medical Services' submission of the
34 claim.

§9-5-22. Medicaid managed care reporting.

1 (a) ~~Beginning January 1, 2016, and annually thereafter, The Bureau for~~ Department of
2 Medical Services shall submit an annual report by May ~~of that year to the Joint Committee on~~
3 ~~Government and Finance and~~ to the Legislative Oversight Commission on Health and Human
4 Resources Accountability that includes, but is not limited to, the following information for all
5 managed care organizations:

6 (1) The name and geographic service area of each managed care organization that has
7 contracted with the ~~bureau~~ department.

8 (2) The total number of health care providers in each managed care organization broken
9 down by provider type and specialty and by each geographic service area.

10 (3) The monthly average and total of the number of members enrolled in each organization
11 broken down by eligibility group.

12 (4) The percentage of clean claims paid each provider type within thirty calendar days and
13 the average number of days to pay all claims for each managed care organization

14 (5) The number of claims denied or pended by each managed care organization.

15 (6) The number and dollar value of all claims paid to nonnetwork providers by claim type
16 for each managed care organization.

17 (7) The number of members choosing the managed care organization and the number of
18 members auto-enrolled into each managed care organization, broken down by managed care
19 organization.

20 (8) The amount of the average per member per month payment and total payments paid
21 to each managed care organization.

22 (9) A comparison of nationally recognized health outcomes measures as required by the
23 contracts the managed care organizations have with the ~~bureau~~ department.

24 (10) A copy of the member and provider satisfaction survey report for each managed care
25 organization.

26 (11) A copy of the annual audited financial statements for each managed care
27 organization.

28 (12) A brief factual narrative of any sanctions levied by the department against a managed
29 care network.

30 (13) The number of members, broken down by each managed care organization, filing a
31 grievance or appeal and the total number and percentage of grievances or appeals that reversed
32 or otherwise resolved a decision in favor of the member.

33 (14) The number of members receiving unduplicated outpatient emergency services and
34 urgent care services, broken down by managed care organization.

35 (15) The number of total inpatient Medicaid days broken down by managed care
36 organization and aggregated by facility type.

37 (16) The following information concerning pharmacy benefits broken down by each
38 managed care organization and by month:

39 (A) Total number of prescription claims;

40 (B) Total number of prescription claims denied;

41 (C) Average adjudication time for prescription claims;

42 (D) Total number of prescription claims adjudicated within thirty days;

43 (E) Total number of prescription claims adjudicated within ninety days;

44 (F) Total number of prescription claims adjudicated after thirty days; and

45 (G) Total number of prescription claims adjudicated after ninety days.

46 (17) The total number of authorizations by service.

47 (18) Any other metric or measure which the ~~Bureau~~ Department of Medical Services
48 ~~deems~~ considers appropriate for inclusion in the report.

49 (19) For those managed care plans that are accredited by a national accreditation
50 organization they shall report their most recent annual quality ranking for their Medicaid plans
51 offered in West Virginia.

52 (20) The medical loss ratio and the administrative cost of each managed care organization
53 and the amount of money refunded to the state if the contract contains a medical loss ratio.

54 (b) The report required in subsection (a) of this section shall also include information
55 regarding fee-for-service providers that is comparable to that required in subsection (a) of this
56 section for managed care organizations: *Provided*, That any report regarding Medicaid fee for
57 service should be designed to determine the medical and pharmacy costs for those benefits
58 similar to ones provided by the managed care organizations and the data shall be reflective of the
59 population served.

60 (c) The report required in subsection (a) of this section shall also include for each of the
61 five most recent fiscal years, annual cost information for both managed care organizations and
62 fee-for-service providers of the Medicaid program expressed in terms of:

63 (1) Aggregate dollars expended by both managed care organizations and fee-for-service
64 providers of the Medicaid programs per fiscal years; and

65 (2) Annual rate of cost inflation from prior fiscal year for both managed care organizations
66 and fee-for-service providers of the Medicaid program.

ARTICLE 10. DEPARTMENT OF MEDICAL SERVICES.

§9-10-1. Organization of the Bureau for Medical Services.

1 (a) The Bureau for Medical Services shall be renamed the Department of Medical
2 Services. The Commissioner of the Bureau for Medical Services shall be the Secretary of the
3 Department of Medical Services. The department shall continue to operate as currently configured
4 as the Bureau for Medical Services with the structure of the Department of Health and Human
5 Resources for administrative support, interagency cooperation, and program support.

6 (b) Rulemaking authority given to the Bureau for Medical Services is transferred to the
7 Department of Medical Services and approval for submission is transferred to the Secretary of
8 the Department on Medical Services.

9 (c) A contract with the Bureau for Medical Services remains valid until expiration and is
10 transferred under the authority of the Department of Medical Services.

CHAPTER 11. TAXATION.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

1 (a) In addition to the rate of the tax imposed by sections nine and fifteen of this article on
2 providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute
3 care hospitals an additional tax of seventy-four one hundredths of one percent on the gross
4 receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient
5 hospital services in this state through a Medicaid upper payment limit program.

6 (b) For purposes of this section, the term “eligible acute care hospital” means any inpatient
7 or outpatient hospital conducting business in this state that is not:

8 (1) A state-owned or -designated facility;

9 (2) A nonstate, but government-owned facility such as a county or city hospital;

10 (3) A critical access hospital, designated as a critical access hospital after meeting all
11 federal eligibility criteria;

12 (4) A licensed free-standing psychiatric or medical rehabilitation hospital; or

13 (5) A licensed long-term acute care hospital.

14 (c) The taxes imposed by this section may not be imposed or collected until all of the
15 following have occurred:

16 (1) A state plan amendment is developed by the ~~Bureau for~~ Department of Medical
17 Services, as authorized by the Secretary of the Department of Health and Human Resources;

18 (2) The state plan amendment is reviewed by the Medical Fund Services Advisory Council;

19 (3) A comment period of not less than thirty days for public comment on the state plan
20 amendment shall have passed; and

21 (4) The state plan amendment is approved by the Centers for Medicare and Medicaid
22 Services.

23 (d) The state plan amendment shall include all of the following:

24 (1) The provisions of the proposed upper payment limit program or programs;

25 (2) A state maintenance of effort to maintain adequate Medicaid funding; and

26 (3) A provision that any other state Medicaid program will not negatively impact the
27 hospital upper payment limit payments. The taxes imposed and collected may be imposed and
28 collected beginning on the earliest date permissible under applicable federal law under the upper
29 payment limit program, as determined by the secretary.

30 (e) There is continued a special revenue account in the State Treasury designated the
31 Medicaid State Share Fund. The amount of taxes collected under this section, including any

32 interest, additions to tax and penalties collected under article ten of this chapter, less the amount
33 of allowable refunds, the amount of any interest payable with respect to such refunds and costs
34 of administration and collection, shall be deposited into the Special Revenue Fund and may not
35 revert to general revenue. The Tax Commissioner shall establish and maintain a separate account
36 and accounting for the funds collected under this section in an account to be designated as the
37 Eligible Acute Care Provider Enhancement Account. The amounts collected shall be deposited,
38 within fifteen days after receipt by the Tax Commissioner, into the Eligible Acute Care Provider
39 Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement
40 Account within the Medicaid State Share Fund may only be used to support West Virginia
41 Medicaid and the hospital Medicaid upper payment limit program and as otherwise set forth in
42 this section.

43 (f) The imposition and collection of taxes imposed by this section is suspended
44 immediately upon the occurrence of any of the following:

45 (1) The effective date of any action by Congress that would disqualify the taxes imposed
46 by this section from counting toward state Medicaid funds available to be used to determine the
47 federal financial participation;

48 (2) The effective date of any decision, enactment or other determination by the Legislature
49 or by any court, officer, department, agency or office of state or federal government that has the
50 effect of disqualifying the tax from counting toward state Medicaid funds available to be used to
51 determine federal financial participation for Medicaid matching funds or creating for any reason a
52 failure of the state to use the assessment of the Medicaid program as described in this section;
53 and

54 (3) The effective date of an appropriation for any state fiscal year for hospital payments
55 under the state Medicaid program that is less than the amount appropriated for state fiscal year
56 ending June 30, 2011.

57 (g) Fifty percent of any funds remaining in the Eligible Acute Care Provider Enhancement
58 Account as of June 30, 2016, shall be transferred to the West Virginia Medical Services Fund.
59 This transfer shall occur no later than September 30, 2016. These funds shall be used during
60 state fiscal year 2017 at the discretion of the ~~Bureau for~~ Department of Medical Services. The
61 remaining fifty percent of any funds in the Eligible Acute Care Provider Enhancement Account as
62 of June 30, 2016, shall remain in the Eligible Acute Care Provider Enhancement Account and
63 shall be used in state fiscal year 2017. If the program expires on June 30, 2017, as set forth in
64 subsection (i) of this section, fifty percent of any funds remaining as of June 30, 2018, shall be
65 transferred on that date to the West Virginia Medical Services Fund. This transfer shall occur only
66 after state fiscal year 2017 fourth quarter tax collections and program payments. The remaining
67 fifty percent of the funds shall be distributed to the eligible acute care providers no later than June
68 30, 2018. The distribution of funds to the eligible acute care providers shall be made in the same
69 proportion as the taxes paid by the eligible acute care providers into the Eligible Acute Care
70 Provider Enhancement Fund during state fiscal year 2017.

71 (h)The changes to the tax rate in this section enacted in the 2016 Regular Session are
72 effective July 1, 2016, upon the approval of the state plan amendment.

73 (i)The tax imposed by this section expires on and after June 30, 2017, unless otherwise
74 extended by the Legislature.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15. Reserves for public employees insurance program.

1 (a) There is hereby continued a special revenue account in the State Treasury, designated
2 the "Public Employees Insurance Reserve Fund", which is an interest-bearing account and may
3 be invested in accordance with the provisions of article six, chapter twelve of this code, with the
4 interest income a proper credit to the fund.

5 (b) The fund shall consist of moneys appropriated by the Legislature and moneys
6 transferred annually pursuant to the provisions of subsection (c) of this section. These moneys
7 shall be held in reserve and appropriated by the Legislature only for the support of the programs
8 provided by the Public Employees Insurance Agency: *Provided*, That the moneys held in the fund
9 may be appropriated to the ~~Bureau for~~ Department of Medical Services ~~of the Department of~~
10 ~~Health and Human Resources.~~

11 (c) Annually each state agency, except for the higher education central office created in
12 article four, chapter eighteen-b of this code; the higher education governing boards as defined in
13 articles two and three of said chapter; and the state institutions of higher education as defined in
14 section two, article one of said chapter shall transfer one percent of its annualized expenditures
15 from state funds, excluding federal funds based on filled full-time equivalents as determined by
16 the state budget office as of the first day of April for that fiscal year, to the Public Employees
17 Insurance Reserve Fund. The secretary may exempt that transfer only upon a showing by the
18 requesting agency that the continued operation of that agency is dependent upon receipt of the
19 exemption.

20 (d) Annually the secretary shall provide a report to the Governor and the Legislature on
21 the amount of reserves established pursuant to the provisions of this section, the number of
22 exemptions granted and the agencies receiving those exemptions.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-5. Distribution of free vaccine preventives of disease.

1 (a) *Declaration of legislative findings and purpose.* — The Legislature finds and declares
2 that early immunization for preventable diseases represents one of the most cost-effective means
3 of disease prevention. The savings which can be realized from immunization, compared to the

4 cost of health care necessary to treat the illness and lost productivity, are substantial.
5 Immunization of children at an early age serves as a preventive measure both in time and money
6 and is essential to maintain our children's health and well-being. The costs of childhood
7 immunizations should not be allowed to preclude the benefits available from a comprehensive,
8 medically supervised child immunization service.

9 (b) The Commissioner of the Bureau for Public Health shall acquire vaccine for the
10 prevention of polio, measles, meningitis, mumps, rubella, chickenpox, diphtheria, pertussis,
11 tetanus, hepatitis-b, haemophilus influenzae-b and other vaccine preventable diseases as
12 considered necessary or required by law and shall distribute the same, free of charge, in quantities
13 he or she considers necessary, to public and private providers, to be used by them for the benefit
14 of citizens to check contagions and control epidemics.

15 (c) The Commissioner of the Bureau for Public Health, through the immunization program,
16 has the responsibility to ensure the distribution, free of charge, of federally supplied vaccines to
17 public and private providers to be used to check contagions and control epidemics: *Provided,*
18 That the public and private providers may not make a charge for the vaccine itself when
19 administering it to a patient. The Commissioner of the Bureau for Public Health, through the
20 immunization program, shall keep an accurate record of any vaccine delivered as provided in this
21 section.

22 (d) The commissioner is charged with establishing an Immunization Advisory Committee.
23 The advisory committee is to make recommendations on the distribution of vaccines acquired
24 pursuant to this section, advise the secretary on the changing needs and opportunities for
25 immunization from known diseases for all persons across their life span and track immunization
26 compliance in accordance with federal and state laws. Members of the Immunization Advisory
27 Committee shall be designated and appointed by the commissioner no later than July 1, 2015.
28 The advisory committee shall be comprised of representatives from the following groups: Public
29 health nursing, public health officers, primary health care providers, pediatricians, family practice

30 physicians, health care administrators, pharmacists, the ~~Commissioner of the Bureau for~~
31 Secretary of the Department of Medical Services, or his or her designee, the health insurance
32 industry, the Director of the Public Employees Insurance Agency, or his or her designee, the self-
33 insured industry and a minimum of three consumers. The state epidemiologist serves as an
34 advisor to the committee. The commissioner, or his or her designee, serves as the chair of the
35 advisory committee. Members of the advisory committee serve four-year terms.

36 (e) An advisory committee member may not participate in a matter involving specific
37 parties that will have a direct and predicable effect on their financial interest. An effect will not be
38 direct in instances where the chain of causation is attenuated or is contingent upon the occurrence
39 of events that are speculative.

40 (f) All health insurance policies and prepaid care policies issued in this state which provide
41 coverage for the children of the insured shall provide coverage for child immunization services to
42 include the cost of the vaccine, if incurred by the health care provider, and all costs of
43 administration from birth through age eighteen years. These services are exempt from any
44 deductible, per-visit charge and/or copayment provisions which may be in force in these policies
45 or contracts. This section does not exempt other health care services provided at the time of
46 immunization from any deductible or copayment provisions.

47 (g) Attending physicians, midwives, nurse practitioners, hospitals, birthing centers, clinics
48 and other appropriate health care providers shall provide parents of newborns and preschool age
49 children with information on the following immunizations: Diphtheria, polio, mumps, meningitis,
50 measles, rubella, tetanus, hepatitis-b, haemophilus influenzae-b, chickenpox and whooping
51 cough. This information should include the availability of free immunization services for children.

ARTICLE 5S. OLDER WEST VIRGINIANS ACT.

§16-5S-7. Local service providers.

1 (a) Service providers who offer “Older West Virginians Act” and related services funded
2 through the federal administration on aging shall:

3 (1) Determine the needs of seniors in the particular geographic area covered by gaining
4 input from the seniors themselves, their families and care givers;

5 (2) Develop a plan of service based on the needs of the seniors in a format provided by
6 the area agency;

7 (3) Provide supportive services, nutrition services and senior centers which shall, within
8 available funding, meet the identified needs of seniors;

9 (4) Serve as an effective and visible advocate for older West Virginians; and

10 (5) Participate in the ~~bureau's~~ Department of Medical Services client tracking system.

11 (b) Service providers who offer Medicaid reimbursed services shall:

12 (1) Comply with appropriate Medicaid regulations and policies including provider
13 agreements, program manuals and program instructions;

14 (2) Maintain client files, provider information and report as required for the determination
15 of compliance with established program standards as determined by the ~~bureau for medical~~
16 ~~services~~ Department of Medical Services; and

17 (3) Participate in the ~~bureau's~~ department's client tracking system.

CHAPTER 33. INSURANCE.

ARTICLE 25G. PROVIDER SPONSORED NETWORKS.

§33-25G-2. Definitions.

1 (a) "Federally Qualified Health Center" means an entity as defined in 42 U.S.C.
2 §1396d(l)(2)(B).

3 (b) "Medicaid beneficiary" means any person participating, through either a state plan
4 amendment or waiver demonstration, in any Medicaid program administered by the West Virginia
5 Department of ~~Health and Human Resources or its Bureau for~~ Medical Services.

6 (c) "Participating provider" means a licensed health care provider who has entered into a
7 contract with a provider sponsored network to provide services to Medicaid enrollees.

8 (d) "Provider sponsored network" means an entity that satisfies the definition of a
9 "Medicaid managed care organization" set forth in 42 U.S.C. §1396b(m)(1)(A), is controlled by
10 one or more Federally Qualified Health Centers, as set forth in 42 U.S.C. §1396b(m)(1)(C)(ii)(IV),
11 and provides or otherwise makes available health care services solely to Medicaid beneficiaries
12 or beneficiaries of Medicaid or Medicare pursuant to contract with the secretary executed in
13 accordance with article two-I, chapter sixteen of this code.

14 (e) "Secretary" means the Secretary of the ~~West Virginia Department of Health and Human~~
15 ~~Resources~~ Department of Medical Services.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations.

1 (a) The Legislature finds that the state's current system of serving children and families in
2 need of or at risk of needing social, emotional and behavioral health services is fragmented. The
3 existing categorical structure of government programs and their funding streams discourages
4 collaboration, resulting in duplication of efforts and a waste of limited resources. Children are
5 usually involved in multiple child-serving systems, including child welfare, juvenile justice and
6 special education. More than ten percent of children presently in care are presently in out-of-state
7 placements. Earlier efforts at reform have focused on quick fixes for individual components of the
8 system at the expense of the whole. It is the purpose of this section to establish a mechanism to
9 achieve systemic reform by which all of the state's child-serving agencies involved in the
10 residential placement of at-risk youth jointly and continually study and improve upon this system
11 and make recommendations to their respective agencies and to the Legislature regarding funding
12 and statutory, regulatory and policy changes. It is further the Legislature's intent to build upon
13 these recommendations to establish an integrated system of care for at-risk youth and families

14 that makes prudent and cost-effective use of limited state resources by drawing upon the
15 experience of successful models and best practices in this and other jurisdictions, which focuses
16 on delivering services in the least restrictive setting appropriate to the needs of the child, and
17 which produces better outcomes for children, families and the state.

18 (b) There is created within the Department of Health and Human Resources the
19 Commission to Study the Residential Placement of Children. The commission consists of the
20 Secretary of the Department of Health and Human Resources, the Commissioner of the Bureau
21 for Children and Families, the Commissioner for the Bureau for Behavioral Health and Health
22 Facilities, the ~~Commissioner for the Bureau for~~ Secretary for the Department of Medical Services,
23 the State Superintendent of Schools, a representative of local educational agencies, the Director
24 of the Office of Institutional Educational Programs, the Director of the Office of Special Education
25 Programs and Assurance, the Director of the Division of Juvenile Services and the Executive
26 Director of the prosecuting attorney's Institute. At the discretion of the West Virginia Supreme
27 Court of Appeals, circuit and family court judges and other court personnel, including the
28 Administrator of the Supreme Court of Appeals and the Director of the Juvenile Probation
29 Services Division, may serve on the commission. These statutory members may further designate
30 additional persons in their respective offices who may attend the meetings of the commission if
31 they are the administrative head of the office or division whose functions necessitate their
32 inclusion in this process. In its deliberations, the commission shall also consult and solicit input
33 from families and service providers.

34 (c) The Secretary of the Department of Health and Human Resources shall serve as chair
35 of the commission, which shall meet on a quarterly basis at the call of the chair.

36 (d) At a minimum, the commission shall study:

37 (1) The current practices of placing children out-of-home and into in-residential
38 placements, with special emphasis on out-of-state placements;

39 (2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve
40 the needs of children requiring residential placements;

41 (3) Strategies and methods to reduce the number of children who must be placed in out-
42 of-state facilities and to return children from existing out-of-state placements, initially targeting
43 older youth who have been adjudicated delinquent;

44 (4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;

45 (5) The availability of and investment in community-based, less restrictive and less costly
46 alternatives to residential placements;

47 (6) Ways in which up-to-date information about in-state placement availability may be
48 made readily accessible to state agency and court personnel, including an interactive secure web
49 site;

50 (7) Strategies and methods to promote and sustain cooperation and collaboration between
51 the courts, state and local agencies, families and service providers, including the use of inter-
52 agency memoranda of understanding, pooled funding arrangements and sharing of information
53 and staff resources;

54 (8) The advisability of including no-refusal clauses in contracts with in-state providers for
55 placement of children whose treatment needs match the level of licensure held by the provider;

56 (9) Identification of in-state service gaps and the feasibility of developing services to fill
57 those gaps, including funding;

58 (10) Identification of fiscal, statutory and regulatory barriers to developing needed services
59 in-state in a timely and responsive way;

60 (11) Ways to promote and protect the rights and participation of parents, foster parents
61 and children involved in out-of-home care;

62 (12) Ways to certify out-of-state providers to ensure that children who must be placed out-
63 of-state receive high quality services consistent with this state's standards of licensure and rules
64 of operation; and

65 (13) Any other ancillary issue relative to foster care placement.

66 (e) The commission shall report annually to the Legislative Oversight Commission on
67 Health and Human Resources Accountability its conclusions and recommendations, including an
68 implementation plan whereby:

69 (1) Out-of-state placements shall be reduced by at least ten percent per year and by at
70 least fifty percent within three years;

71 (2) Child-serving agencies shall develop joint operating and funding proposals to serve
72 the needs of children and families that cross their jurisdictional boundaries in a more seamless
73 way;

74 (3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in
75 order for agencies to work collaboratively while maximizing the availability of federal funds;

76 (4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;

77 (5) System of care components and cooperative relationships shall be incrementally
78 established at the local, state and regional levels, with links to existing resources, such as family
79 resource networks and regional summits, wherever possible; and

80 (6) Recommendations for changes in fiscal, statutory and regulatory provisions are
81 included for legislative action.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

1 (a)(1) The information required by this article to be kept by the board is confidential and
2 not subject to the provisions of chapter twenty-nine-b of this code or obtainable as discovery in
3 civil matters absent a court order and is open to inspection only by inspectors and agents of the
4 board, members of the West Virginia State Police expressly authorized by the superintendent of

5 the West Virginia State Police to have access to the information, authorized agents of local law-
6 enforcement agencies as members of a federally affiliated drug task force, authorized agents of
7 the federal Drug Enforcement Administration, duly authorized agents of the ~~Bureau for~~
8 Department of Medical Services, duly authorized agents of the office of the Chief Medical
9 Examiner for use in post-mortem examinations, duly authorized agents of licensing boards of
10 practitioners in this state and other states authorized to prescribe Schedules II, III and IV
11 controlled substances, prescribing practitioners and pharmacists and persons with an enforceable
12 court order or regulatory agency administrative subpoena: Provided, That all law-enforcement
13 personnel who have access to the Controlled Substances Monitoring Program database shall be
14 granted access in accordance with applicable state laws and the board's legislative rules, shall
15 be certified as a West Virginia law-enforcement officer and shall have successfully completed
16 training approved by the board. All information released by the board must be related to a specific
17 patient or a specific individual or entity under investigation by any of the above parties except that
18 practitioners who prescribe or dispense controlled substances may request specific data related
19 to their Drug Enforcement Administration controlled substance registration number or for the
20 purpose of providing treatment to a patient: Provided, however, That the West Virginia Controlled
21 Substances Monitoring Program Database Review Committee established in subsection (b) of
22 this section is authorized to query the database to comply with said subsection.

23 (2) Subject to the provisions of subdivision (1) of this subsection, the board shall also
24 review the West Virginia Controlled Substance Monitoring Program database and issue reports
25 that identify abnormal or unusual practices of patients who exceed parameters as determined by
26 the advisory committee established in this section. The board shall communicate with
27 practitioners and dispensers to more effectively manage the medications of their patients in the
28 manner recommended by the advisory committee. All other reports produced by the board shall
29 be kept confidential. The board shall maintain the information required by this article for a period
30 of not less than five years. Notwithstanding any other provisions of this code to the contrary, data

31 obtained under the provisions of this article may be used for compilation of educational, scholarly
32 or statistical purposes, and may be shared with the West Virginia Department of Health and
33 Human Resources for those purposes, as long as the identities of persons or entities and any
34 personally identifiable information, including protected health information, contained therein shall
35 be redacted, scrubbed or otherwise irreversibly destroyed in a manner that will preserve the
36 confidential nature of the information. No individual or entity required to report under section four
37 of this article may be subject to a claim for civil damages or other civil relief for the reporting of
38 information to the board as required under and in accordance with the provisions of this article.

39 (3) The board shall establish an advisory committee to develop, implement and
40 recommend parameters to be used in identifying abnormal or unusual usage patterns of patients
41 in this state. This advisory committee shall:

42 (A) Consist of the following members: A physician licensed by the West Virginia Board of
43 Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed
44 by the West Virginia Board of Osteopathic Medicine, a licensed physician certified by the
45 American Board of Pain Medicine, a licensed physician board certified in medical oncology
46 recommended by the West Virginia State Medical Association, a licensed physician board
47 certified in palliative care recommended by the West Virginia Center on End of Life Care, a
48 pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the
49 West Virginia Academy of Family Physicians, an expert in drug diversion and such other members
50 as determined by the board.

51 (B) Recommend parameters to identify abnormal or unusual usage patterns of controlled
52 substances for patients in order to prepare reports as requested in accordance with subsection
53 (a), subdivision (2) of this section.

54 (C) Make recommendations for training, research and other areas that are determined by
55 the committee to have the potential to reduce inappropriate use of prescription drugs in this state,

56 including, but not limited to, studying issues related to diversion of controlled substances used for
57 the management of opioid addiction.

58 (D) Monitor the ability of medical services providers, health care facilities, pharmacists and
59 pharmacies to meet the twenty-four-hour reporting requirement for the Controlled Substances
60 Monitoring Program set forth in section three of this article, and report on the feasibility of requiring
61 real-time reporting.

62 (E) Establish outreach programs with local law enforcement to provide education to local
63 law enforcement on the requirements and use of the Controlled Substances Monitoring Program
64 database established in this article.

65 (b) The board shall create a West Virginia Controlled Substances Monitoring Program
66 Database Review Committee of individuals consisting of two prosecuting attorneys from West
67 Virginia counties, two physicians with specialties which require extensive use of controlled
68 substances and a pharmacist who is trained in the use and abuse of controlled substances. The
69 review committee may determine that an additional physician who is an expert in the field under
70 investigation be added to the team when the facts of a case indicate that the additional expertise
71 is required. The review committee, working independently, may query the database based on
72 parameters established by the advisory committee. The review committee may make
73 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns
74 indicated by outliers in the system or abnormal or unusual usage patterns of controlled
75 substances by patients which the review committee has reasonable cause to believe necessitates
76 further action by law enforcement or the licensing board having jurisdiction over the practitioners
77 or dispensers under consideration. The review committee shall also review notices provided by
78 the chief medical examiner pursuant to subsection (h), section ten, article twelve, chapter sixty-
79 one of this code and determine on a case-by-case basis whether a practitioner who prescribed or
80 dispensed a controlled substance resulting in or contributing to the drug overdose may have
81 breached professional or occupational standards or committed a criminal act when prescribing

82 the controlled substance at issue to the decedent. Only in those cases in which there is
83 reasonable cause to believe a breach of professional or occupational standards or a criminal act
84 may have occurred, the review committee shall notify the appropriate professional licensing
85 agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-
86 enforcement agencies and provide pertinent information from the database for their consideration.
87 The number of cases identified shall be determined by the review committee based on a number
88 that can be adequately reviewed by the review committee. The information obtained and
89 developed may not be shared except as provided in this article and is not subject to ~~the provisions~~
90 ~~of~~ chapter twenty-nine-b of this code or obtainable as discovering in civil matters absent a court
91 order.

92 (c) The board is responsible for establishing and providing administrative support for the
93 advisory committee and the West Virginia Controlled Substances Monitoring Program Database
94 Review Committee. The advisory committee and the review committee shall elect a chair by
95 majority vote. Members of the advisory committee and the review committee may not be
96 compensated in their capacity as members but shall be reimbursed for reasonable expenses
97 incurred in the performance of their duties.

98 (d) The board shall promulgate rules with advice and consent of the advisory committee,
99 in accordance with ~~the provisions of~~ article three, chapter twenty-nine-a of this code. The
100 legislative rules must include, but ~~shall~~ may not be limited to, the following matters:

101 (1) Identifying parameters used in identifying abnormal or unusual prescribing or
102 dispensing patterns;

103 (2) Processing parameters and developing reports of abnormal or unusual prescribing or
104 dispensing patterns for patients, practitioners and dispensers;

105 (3) Establishing the information to be contained in reports and the process by which the
106 reports will be generated and disseminated; and

107 (4) Setting up processes and procedures to ensure that the privacy, confidentiality, and
108 security of information collected, recorded, transmitted and maintained by the review committee
109 is not disclosed except as provided in this section.

110 (e) Persons or entities with access to the West Virginia Controlled Substances Monitoring
111 Program database pursuant to this section may, pursuant to rules promulgated by the board,
112 delegate appropriate personnel to have access to said database.

113 (f) Good faith reliance by a practitioner on information contained in the West Virginia
114 Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or
115 declining to prescribe or dispense a schedule II, III, or IV controlled substance ~~shall~~ constitutes
116 an absolute defense in any civil or criminal action brought due to prescribing or dispensing or
117 refusing or declining to prescribe or dispense.

118 (g) A prescribing or dispensing practitioner may notify law enforcement of a patient who,
119 in the prescribing or dispensing practitioner's judgment, may be in violation of section four
120 hundred ten, article four of this chapter, based on information obtained and reviewed from the
121 controlled substances monitoring database. A prescribing or dispensing practitioner who makes
122 a notification pursuant to this subsection is immune from any civil, administrative or criminal
123 liability that otherwise might be incurred or imposed because of the notification if the notification
124 is made in good faith.

125 (h) Nothing in the article may be construed to require a practitioner to access the West
126 Virginia Controlled Substances Monitoring Program database except as provided in section five-
127 a of this article.

128 (i) The board shall provide an annual report on the West Virginia Controlled Substance
129 Monitoring Program to the Legislative Oversight Commission on Health and Human Resources
130 Accountability with recommendations for needed legislation no later than January 1 of each year.

NOTE: The purpose of this bill is to provide that the Bureau for Medical Services be renamed the Department of Medical Services with the Commissioner of the Bureau for Medical Services becoming the Secretary of the Department of Medical Services. The bill provides that the Department continue to operate as currently configured as the Bureau for Medical Services with the structure of the Department of the Health and Human Resources for administrative support, interagency cooperation and program support. The bill; removes the Human Rights Commission, the Division of Human Services, Bureau for Public Health, Office of Emergency Medical Services and the Emergency Medical Service Advisory Council, Health Care Authority, Commission on Mental Retardation, Women's Commission and The Child Support Enforcement Division from administration by the Department of Administration. It also provides that the Bureau for Public Health, The Bureau for Child Support Enforcement, The Bureau of Children and Families, The Office of the Inspector General, The Health Care Authority, The State Commission on Intellectual Disability, The Women's Commission, The Commission for the Deaf and Hard of Hearing; and The James H. "Tiger" Morton Catastrophic Illness Commission are to be administered as a part of the Department of Health and Human Resources. The bill provides that the Bureau of Medical Services and The Children's Health Insurance Agency are incorporated in and administered as a part of the Department of Medical Services. Finally, the bill makes technical changes in various chapters of the code to reflect the creation of the Department of Medical Services.

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