

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2904**

BY DELEGATE ELLINGTON

[Introduced March 9, 2017; Referred  
to the Committee on Health and Human Resources  
then Finance.]

1 A BILL to repeal §16-2D-5c and §16-2D-5f of the Code of West Virginia, 1931, as amended; to  
2 repeal §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-  
3 29I-8, §16-29I-9 and §16-29I-10 of said code; to amend and reenact §5F-1-3a of said  
4 code; to amend and reenact §6-7-2a of said code; to amend and reenact §9-4C-7 of said  
5 code; to amend and reenact §11-27-9 and §11-27-11 of said code; to amend and reenact  
6 §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13 and §16-  
7 2D-16; to amend and reenact §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5 and §16-5F-6 of  
8 said code; to amend and reenact §16-29B-3, §16-29B-5, §16-29B-6, §16-29B-7, §16-29B-  
9 8, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-12, §16-29B-13, §16-29B-14, §16-29B-  
10 15, §16-29B-24, §16-29B-25 and §16-29B-26 of said code; to amend said code by adding  
11 thereto two new sections, designated §16-29B-5a and §16-29B-12a; to amend and  
12 reenact §16-29G-2, §16-29G-4, §16-29G-5 and §16-29G-6 of said code, all relating  
13 generally to the Health Care Authority; reorganizing the West Virginia Health Care  
14 Authority; replacing the salaried board of directors with a volunteer board of review;  
15 creating the position of Executive Director of the Health Care Authority as the  
16 administrative head of the authority; establishing a salary for the position of Executive  
17 Director; establishing the duties and powers of the Health Care Authority; establishing the  
18 board of review to adjudicate certificate of need applications; adding additional exemptions  
19 to the certificate of need review; clarifying certain provisions of the certificate of need  
20 review, including procedures for review and appeals of unfavorable determinations;  
21 updating provisions related to financial disclosures by health care facilities; authorizing the  
22 Secretary of the Department of Health and Human Resources to coordinate the gathering  
23 of information by the authority and other bureaus of the department; and correcting  
24 references to the authority; eliminating rate review from the authority of the Health Care  
25 Authority; repeal of the West Virginia Health Care Authority Revolving Loan and Grant  
26 Fund; making technical corrections; and updating code references.

*Be it enacted by the Legislature of West Virginia:*

1           That §16-2D-5c and §16-2D-5f, of the Code of West Virginia, 1931, as amended, be  
2 repealed; that §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-  
3 29I-8, §16-29I-9 and §16-29I-10 of said code be repealed; that §5F-1-3a of said code be amended  
4 and reenacted; that §6-7-2a of said code be amended and reenacted; that §9-4C-7 of said code  
5 be amended and reenacted; that §11-27-9 and §11-27-11 of said code be amended and  
6 reenacted; that §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13 and  
7 §16-2D-16 of said code be amended and reenacted; that §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-  
8 5 and §16-5F-6 of said code be amended and reenacted; that §16-29B-3, §16-29B-5, §16-29B-  
9 6, §16-29B-7, §16-29B-8, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-12, §16-29B-13, §16-  
10 29B-14, §16-29B-15, §16-29B-24, §16-29B-25 and §16-29B-26 of said code be amended and  
11 reenacted; that said code be amended by adding thereto two new sections, designated §16-29B-  
12 5a and §16-29B-12a; and that §16-29G-2, §16-29G-4, §16-29G-5 and §16-29G-6 of said code  
13 be amended and reenacted, all to read as follows:

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

**ARTICLE 1. GENERAL PROVISIONS.**

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

1           There is hereby created an executive compensation commission composed of three  
2 members, one of whom shall be the secretary of administration, one of whom shall be appointed  
3 by the Governor from the names of two or more nominees submitted by the President of the  
4 Senate, and one of whom shall be appointed by the Governor from the names of two or more  
5 nominees submitted by the Speaker of the House of Delegates. The names of such nominees  
6 shall be submitted to the Governor by not later than June 1, 2000, and the appointment of such  
7 members shall be made by the Governor by not later than July 1, 2000. The members appointed

8 by the Governor shall have had significant business management experience at the time of their  
9 appointment and shall serve without compensation other than reimbursement for their reasonable  
10 expenses necessarily incurred in the performance of their commission duties. For the 2001  
11 regular session of the Legislature and every four years thereafter, the commission shall review  
12 the compensation for cabinet secretaries and other appointed officers of this state, including, but  
13 not limited to, the following: Commissioner, Division of Highways; Commissioner, Bureau of  
14 Employment Programs; Director, Division of Environmental Protection; Commissioner, Bureau of  
15 Senior Services; Director of Tourism; Commissioner, Division of Tax; Administrator, Division of  
16 Health; Commissioner, Division of Corrections; Director, Division of Natural Resources;  
17 Superintendent, State Police; administrator, Lottery Division; Director, Public Employees  
18 Insurance Agency; administrator, Alcohol Beverage Control Commission; Commissioner,  
19 Division of Motor Vehicles; Director, Division of Personnel; Adjutant General; ~~chairman, Health~~  
20 ~~Care Authority; members, Health Care Authority;~~ the Executive Director of the Health Care  
21 Authority; Director, Division of Rehabilitation Services; Executive Director, Educational  
22 Broadcasting Authority; executive secretary, Library Commission; Chairman and members of the  
23 Public Service Commission; Director of Emergency Services; administrator, Division of Human  
24 Services; Executive Director, Human Rights Commission; Director, Division of Veterans Affairs;  
25 Director, Office of Miner's Health Safety and Training; Commissioner, Division of Banking;  
26 Commissioner, Division of Insurance; Commissioner, Division of Culture and History;  
27 Commissioner, Division of Labor; Director, Prosecuting Attorneys Institute; Director, Board of Risk  
28 and Insurance Management; Commissioner, Oil and Gas Conservation Commission; Director,  
29 Geological and Economic Survey; Executive Director, Water Development Authority; Executive  
30 Director, Public Defender Services; Director, State Rail Authority; Chairman and members of the  
31 Parole Board; members, Employment Security Review Board; members, Workers' Compensation  
32 Appeal Board; Chairman, Racing Commission; Executive Director, Women's Commission; and  
33 Director, Hospital Finance Authority.

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

## **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

### **ARTICLE 7. COMPENSATION AND ALLOWANCES.**

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

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

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

10           Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections,  
 11 \$80,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police,  
 12 \$85,000; Commissioner, Division of Banking, \$75,000; Commissioner, Division of Culture and  
 13 History, \$65,000; Commissioner, Alcohol Beverage Control Commission, \$75,000;  
 14 Commissioner, Division of Motor Vehicles, \$75,000; ~~Chairman, Health Care Authority, \$80,000;~~  
 15 ~~members, Health Care Authority, \$70,000;~~ Director, Human Rights Commission, \$55,000;  
 16 Commissioner, Division of Labor, \$70,000; prior to July 1, 2011, Director, Division of Veterans

17 Affairs, \$65,000; Chairperson, Board of Parole, \$55,000; members, Board of Parole, \$50,000;  
18 members, Employment Security Review Board, \$17,000; and Commissioner, Workforce West  
19 Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows: Health  
20 and Human Resources, \$95,000: *Provided*, That effective July 1, 2013, the Secretary of the  
21 Department of Health and Human Resources shall be paid an annual salary not to exceed  
22 \$175,000; Transportation, \$95,000: *Provided, however*, That if the same person is serving as both  
23 the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid  
24 \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration,  
25 \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000;  
26 and Environmental Protection, \$95,000: *Provided further*, That any officer specified in this  
27 subsection whose salary is increased by more than \$5,000 as a result of the amendment and  
28 reenactment of this section during the 2011 regular session of the Legislature shall be paid the  
29 salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum  
30 salary provided in this subsection.

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

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

43 Care Authority, \$80,000.

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

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

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

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

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.**

#### **§9-4C-7. Powers and duties.**

1 (a) Each board created pursuant to this article shall:

2 (1) Develop, recommend and review reimbursement methodology where applicable, and  
 3 develop and recommend a reasonable provider fee schedule, in relation to its respective provider

4 groups, so that the schedule conforms with federal Medicaid laws and remains within the limits of  
5 annual funding available to the single state agency for the Medicaid program. In developing the  
6 fee schedule the board may refer to a nationally published regional specific fee schedule, if  
7 available, as selected by the secretary in accordance with section eight of this article. The board  
8 may consider identified health care priorities in developing its fee schedule to the extent permitted  
9 by applicable federal Medicaid laws, and may recommend higher reimbursement rates for basic  
10 primary and preventative health care services than for other services. In identifying basic primary  
11 and preventative health care services, the board may consider factors, including, but not limited  
12 to, services defined and prioritized by the basic services task force of the health care planning  
13 commission in its report issued in December of the year 1992; and minimum benefits and  
14 coverages for policies of insurance as set forth in section fifteen, article fifteen, chapter thirty-three  
15 of this code and section four, article sixteen-c of said chapter and rules of the Insurance  
16 Commissioner promulgated thereunder. If the single state agency approves the adjustments to  
17 the fee schedule, it shall implement the provider fee schedule;

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

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

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

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

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



30 secretary.

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

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

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

## CHAPTER 11. TAXATION.

### ARTICLE 27. HEALTH CARE PROVIDER TAXES.

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

1 (a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the  
2 business of providing inpatient hospital services, there is hereby levied and shall be collected

3 from every person rendering such service an annual broad-based health care related  
4 tax. ~~Provided, That a hospital which meets all the requirements of section twenty-one, article~~  
5 ~~twenty-nine-b, chapter sixteen of this code and regulations thereunder may change or amend its~~  
6 ~~schedule of rates to the extent necessary to compensate for the tax in accordance with the~~  
7 ~~following procedures:~~

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

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

24 ~~(3) When any change affecting an increase in rates goes into effect before a final order is~~  
25 ~~entered in the proceedings, for whatever reasons, where it deems it necessary and practicable,~~  
26 ~~the health care cost review authority may order the hospital to keep a detailed and accurate~~  
27 ~~account of all amounts received by reason of the increase in rates and the purchasers and third-~~  
28 ~~party payors from whom such amounts were received. At the conclusion of any hearing, appeal~~

29 ~~or other proceeding, the health care cost review authority may order the hospital to refund with~~  
30 ~~interest to each affected purchaser and/or third-party payor any part of the increase in rates that~~  
31 ~~may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital~~  
32 ~~shall, under appropriate terms and conditions determined by the health care cost review authority,~~  
33 ~~charge over and amortize by means of a temporary decrease in rates whatever income is realized~~  
34 ~~from that portion of the increase in rates which was subsequently held to be excessive or~~  
35 ~~unreasonable.~~

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

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

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

46 (c) Definitions. --

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

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

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

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

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

1 (a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the  
2 business of providing nursing facility services, other than those services of intermediate care  
3 facilities for individuals with an intellectual disability, there is levied and shall be collected from  
4 every person rendering such service an annual broad-based health care-related tax. ~~Provided,~~  
5 ~~That hospitals which provide nursing facility services may adjust nursing facility rates to the extent~~  
6 ~~necessary to compensate for the tax without first obtaining approval from the Health care~~  
7 ~~Authority: Provided, however, That the rate adjustment is limited to a single adjustment during the~~  
8 ~~initial year of the imposition of the tax which adjustment is exempt from prospective review by the~~  
9 ~~Health Care Authority and further which is limited to an amount not to exceed the amount of the~~  
10 ~~tax which is levied against the hospital for the provision of nursing facility services pursuant to this~~  
11 ~~section. The Health Care Authority shall retroactively review the rate increases implemented by~~  
12 ~~the hospitals under this section during the regular rate review process. A hospital which fails to~~  
13 ~~meet the criteria established by this section for a rate increase exempt from prospective review is~~  
14 ~~subject to the penalties imposed under article twenty-nine b, chapter sixteen of the code~~

15 (b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section is five  
16 and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility  
17 services in this state, other than services of intermediate care facilities for individuals with an  
18 intellectual disability. ~~This rate shall be increased to five and seventy-two one hundredths percent~~

19 ~~of the gross receipts received or receivable by providers of nursing facility services on and after~~  
 20 ~~October 1, 2015, and shall again be decreased to five and one-half percent of the gross receipts~~  
 21 ~~received or receivable by providers of nursing services after June 30, 2016~~

22 (c) Definitions. --

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

29 (2) "Nursing facility services" means those services that are nursing facility services for  
 30 purposes of §1903(w) of the Social Security Act.

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

**CHAPTER 16. PUBLIC HEALTH.**

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

**§16-2D-2. Definitions.**

1 As used in this article:

2 (1) "Affected person" means:

3 (A) The applicant;

4 (B) An agency or organization representing consumers;

5 (C) An individual residing within the geographic area but within this state served or to be  
 6 served by the applicant;

7 (D) An individual who regularly uses the health care facilities within that geographic area;

8 (E) A health care facility located within this state which provide services similar to the

9 services of the facility under review and which will be significantly affected by the proposed  
10 project;

11 (F) A health care facility located within this state which, before receipt by the authority of  
12 the proposal being reviewed, ~~have~~ has formally indicated an intention to provide similar services  
13 within this state in the future;

14 (G) Third-party payors who reimburse health care facilities within this state ~~similar to those~~  
15 ~~proposed for services; or~~

16 ~~(H) An agency that establishes rates for health care facilities within this state similar to~~  
17 ~~those proposed; or~~

18 ~~(H)~~ (H) An organization representing health care providers.

19 (2) "Ambulatory health care facility" means a facility that provides health services to  
20 noninstitutionalized and nonhomebound persons on an outpatient basis.

21 (3) "Ambulatory surgical facility" means a facility not physically attached to a health care  
22 facility that provides surgical treatment to patients not requiring hospitalization.

23 (4) "Applicant" means a person ~~proposing a proposed health service~~ applying for a  
24 certificate of need, exemption or determination of review;

25 (5) "Authority" means the West Virginia Health Care Authority as provided in article twenty-  
26 nine-b of this chapter.

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

30 (7) "Behavioral health services" means services provided for the care and treatment of  
31 persons with mental illness or developmental disabilities in an inpatient or outpatient setting.

32 (8) "Birthing center" means a short-stay ambulatory health care facility designed for low-  
33 risk births following normal uncomplicated pregnancy.

34 (9) "Campus" means the adjacent grounds and buildings, or grounds and buildings not

35 separated by more than a public right-of-way, of a health care facility.

36 (10) "Capital expenditure" means:

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

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

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

44 (C) The transfer of equipment or facilities for less than fair market value if the transfer of  
45 the equipment or facilities at fair market value would be subject to review; or

46 (D) A series of expenditures, if the sum total exceeds the expenditure minimum and if  
47 determined by the ~~state agency~~ authority to be a single capital expenditure subject to review. In  
48 making this determination, the ~~state agency~~ authority shall consider: Whether the expenditures  
49 are for components of a system which is required to accomplish a single purpose; or whether the  
50 expenditures are to be made within a two-year period within a single department such that they  
51 will constitute a significant modernization of the department.

52 (11) "Charges" means the economic value established for accounting purposes of the  
53 goods and services a hospital provides for all classes of purchasers;

54 (12) "Community mental health and intellectual disability facility" means a facility which  
55 provides comprehensive services and continuity of care as emergency, outpatient, partial  
56 hospitalization, inpatient or consultation and education for individuals with mental illness,  
57 intellectual disability.

58 (13) "Diagnostic imaging" means the use of radiology, ultrasound, mammography,  
59 fluoroscopy, nuclear imaging, densitometry to create a graphic depiction of the body parts;

60 (14) "Drug and Alcohol Rehabilitation Services" means a medically or

61 psychotherapeutically supervised process for assisting individuals ~~on an inpatient or outpatient~~  
62 ~~basis~~ through the processes of withdrawal from dependency on psychoactive substances.

63 (15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of  
64 any facility, equipment, or services including the cost of any studies, surveys, designs, plans,  
65 working drawings, specifications and other activities, including staff effort and consulting at and  
66 above \$5 million.

67 (16) "Health care facility" means a publicly or privately owned facility, agency or entity that  
68 offers or provides health services, whether a for-profit or nonprofit entity and whether or not  
69 licensed, or required to be licensed, in whole or in part.

70 (17) "Health care provider" means a person authorized by law to provide professional  
71 health ~~service~~ services in this state to an individual.

72 (18) "Health services" means clinically related preventive, diagnostic, treatment or  
73 rehabilitative services.

74 (19) "Home health agency" means an organization primarily engaged in providing  
75 professional nursing services either directly or through contract arrangements and at least one of  
76 the following services:

77 (A) Home health aide services;

78 (B) Physical therapy;

79 (C) Speech therapy;

80 (D) Occupational therapy;

81 (E) Nutritional services; or

82 (F) Medical social services to persons in their place of residence on a part-time or  
83 intermittent basis.

84 (20) "Hospice" means a coordinated program of home and inpatient care provided directly  
85 or through an agreement under the direction of a licensed hospice program which provides  
86 palliative and supportive medical and other health services to terminally ill individuals and their



87 families.

88 (21) "Hospital" means a facility licensed pursuant to the provisions of article five-b of this  
89 chapter and any acute care facility operated by the state government, that primarily provides  
90 inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under  
91 the supervision of physicians.

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

95 (23) "Like equipment" means medical equipment in which functional and technological  
96 capabilities are similar to the equipment being replaced; and the replacement equipment is to be  
97 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use;  
98 and it does not constitute a substantial change in health service or a proposed health service.

99 (24) "Major medical equipment" means a single unit of medical equipment or a single  
100 system of components with related functions which is used for the provision of medical and other  
101 health services and costs in excess of the expenditure minimum. This term does not include  
102 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory  
103 services if the clinical laboratory is independent of a physician's office and a hospital and it has  
104 been determined under Title XVIII of the Social Security Act to meet the requirements of  
105 paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining  
106 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,  
107 plans, working drawings, specifications and other activities essential to the acquisition of such  
108 equipment shall be included. If the equipment is acquired for less than fair market value, the term  
109 "cost" includes the fair market value.

110 (25) "Medically underserved population" means the population of an area designated by  
111 the authority as having a shortage of a specific health service.

112 (26) "Nonhealth-related project" means a capital expenditure for the benefit of patients,

113 visitors, staff or employees of a health care facility and not directly related to a health service  
114 offered by the health care facility.

115 (27) "Offer" means the health care facility holds itself out as capable of providing, or as  
116 having the means to provide, specified health services.

117 (28) "Opioid treatment program" means as that term is defined in section five-y of chapter  
118 sixteen.

119 ~~(28)~~ (29) "Person" means an individual, trust, estate, partnership, limited liability  
120 corporation, committee, corporation, governing body, association and other organizations such  
121 as joint-stock companies and insurance companies, a state or a political subdivision or  
122 instrumentality thereof or any legal entity recognized by the state.

123 ~~(29)~~ (30) "Personal care agency" means an entity that provides personal care services  
124 approved by the Bureau of Medical Services.

125 ~~(30)~~ (31) "Personal care services" means personal hygiene; dressing; feeding; nutrition;  
126 environmental support and health-related tasks provided by a personal care agency.

127 ~~(31)~~ (32) "Physician" means an individual who is licensed to practice allopathic medicine  
128 by the Board of Medicine or licensed to practice osteopathic medicine by the Board of Osteopathy  
129 Osteopathic Medicine. to practice in West Virginia

130 ~~(32)~~ (33) "Proposed health service" means any service as described in section eight of  
131 this article.

132 ~~(33)~~ (34) "Purchaser" means an individual who is directly or indirectly responsible for  
133 payment of patient care services rendered by a health care provider, but does not include third-  
134 party payers.

135 ~~(34)~~ (35) "Rates" means charges imposed by a health care facility for health services.

136 ~~(35)~~ (36) "Records" means accounts, books and other data related to health service costs  
137 at health care facilities subject to the provisions of this article which do not include privileged  
138 medical information, individual personal data, confidential information, the disclosure of which is

139 prohibited by other provisions of this code and the laws enacted by the federal government, and  
140 information, the disclosure of which would be an invasion of privacy.

141 ~~(36)~~ (37) "Rehabilitation facility" means an inpatient facility licensed in West Virginia  
142 operated for the primary purpose of assisting in the rehabilitation of disabled persons through an  
143 integrated program of medical and other services.

144 ~~(37)~~ (38) "Related organization" means an organization, whether publicly owned,  
145 nonprofit, tax-exempt or for profit, related to a health care facility through common membership,  
146 governing bodies, trustees, officers, stock ownership, family members, partners or limited  
147 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint  
148 ventures. For the purposes of this subdivision "family members" means parents, children, brothers  
149 and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

150 ~~(38)~~ (39) "Skilled nursing facility" means an institution, or a distinct part of an institution,  
151 that primarily provides inpatient skilled nursing care and related services, or rehabilitation  
152 services, to injured, disabled or sick persons.

153 ~~(39)~~ (40) "Standard" means a health service guideline developed by the authority and  
154 instituted under section six.

155 ~~(40)~~ (41) "State health plan" means a document prepared by the authority that sets forth  
156 a strategy for future health service needs in ~~the~~ this state.

157 ~~(41)~~ (42) "Substantial change to the bed capacity" of a health care facility means any  
158 change, associated with a capital expenditure, that increases or decreases the bed capacity or  
159 relocates beds from one physical facility or site to another, but does not include a change by which  
160 a health care facility reassigns existing beds. ~~as swing beds between acute care and long-term  
161 care categories or a decrease in bed capacity in response to federal rural health initiatives~~

162 (43) "Substantial change to the health services" means:

163 (A) The addition of a health service offered by or on behalf of the health care facility which  
164 was not offered by or on behalf of the facility within the twelve-month period before the month in

165 which the service is was first offered; or

166 (B) The termination of a health service offered by or on behalf of the facility but does not  
167 include the termination of ambulance service, wellness centers or programs, adult day care or  
168 respite care by acute care facilities.

169 (44) "Telehealth" means the use of electronic information and telecommunications  
170 technologies to support long-distance clinical health care, patient and professional health-related  
171 education, public health and health administration.

172 ~~(44)~~ (45) "Third-party payor" means an individual, person, corporation or government  
173 entity responsible for payment for patient care services rendered by health care providers.

174 ~~(45)~~ (46) "To develop" means to undertake those activities which upon their completion  
175 will result in the offer of a proposed health service or the incurring of a financial obligation in  
176 relation to the offering of such a service.

**§16-2D-3. Powers and duties of the authority.**

1 (a) The authority shall:

2 (1) Administer the certificate of need program;

3 (2) Review the state health plan, the certificate of need standards, and the cost  
4 effectiveness of the certificate of need program and make any amendments and modifications to  
5 each that it may deem necessary, no later than September 1, 2017, and biennially thereafter.

6 (3) Shall adjust the expenditure minimum annually and publish to its website the updated  
7 amount on or before December 31, of each year. The expenditure minimum adjustment shall be  
8 based on the DRI inflation index. ~~published in the Global Insight DRI/WEFA Health Care Cost~~  
9 ~~Review~~

10 (4) Create a standing advisory committee to advise and assist in amending the state health  
11 plan, the certificate of need standards, and performing the state agencies' responsibilities.

12 (b) The authority may:

13 (1) (A) Order a moratorium upon the offering or development of a health service when

14 criteria and guidelines for evaluating the need for the health service have not yet been adopted  
15 or are obsolete or when it determines that the proliferation of the health service may cause an  
16 adverse impact on the cost of health services or the health status of the public.

17 (B) A moratorium shall be declared by a written order which shall detail the circumstances  
18 requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health  
19 service affected by the moratorium, or one hundred eighty days from the declaration of a  
20 moratorium, whichever is less, the moratorium shall be declared to be over and applications for  
21 certificates of need are processed pursuant to section eight.

22 (2) Issue grants and loans to financially vulnerable health care facilities located in  
23 underserved areas that the authority and the Office of Community and Rural Health Services  
24 determine are collaborating with other providers in the service area to provide cost effective health  
25 services.

26 (3) Approve an emerging health service or technology for one year.

27 (4) Exempt from certificate of need or annual assessment requirements to financially  
28 vulnerable health care facilities located in underserved areas that the state agency and the Office  
29 of Community and Rural Health Services determine are collaborating with other providers in the  
30 service area to provide cost effective health services.

#### **§16-2D-4. Rule-making Authority.**

1 (a) The authority shall propose rules for legislative approval in accordance with the  
2 provisions of article three, chapter twenty-nine-a of this code, to implement the following:

3 (1) Information a person shall provide when applying for a certificate of need;

4 (2) Information a person shall provide when applying for an exemption;

5 (3) Process for the issuance of grants and loans to financially vulnerable health care  
6 facilities located in underserved areas;

7 (4) ~~The required~~ Information a person shall provide in a letter of intent;

8 (5) Process for an expedited certificate of need;

9 (6) Determine medically underserved population. The authority may consider unusual  
 10 local conditions that are a barrier to accessibility or availability of health services. The authority  
 11 may consider when making its determination of a medically underserved population designated  
 12 by the federal Secretary of Health and Human Services under Section 330(b)(3) of the Public  
 13 Health Service Act, as amended, Title 42 U.S.C. §254;

14 (7) Process to review an approved certificate of need; and

15 (8) Process to review approved proposed health services for which the expenditure  
 16 maximum is exceeded or is expected to be exceeded.

17 ~~(b) The authority shall propose emergency rules by December 31, 2016, to effectuate the~~  
 18 ~~changes to this article~~

19 ~~(e)~~ (b) All of the authority's rules in effect and not in conflict with the provisions of this  
 20 article, shall remain in effect until they are amended or rescinded.

**§16-2D-9. Health services that cannot be developed.**

1 Notwithstanding section eight and eleven, these health services require a certificate of  
 2 need but the authority may not issue a certificate of need to:

3 (1) A health care facility adding intermediate care or skilled nursing beds to its current  
 4 licensed bed complement, except as provided in subdivision ~~twenty-three~~ (23), subsection (c),  
 5 section eleven;

6 (2) A person developing, constructing or replacing a skilled nursing facility except in the  
 7 case of facilities designed to replace existing beds in existing facilities that may soon be deemed  
 8 unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to  
 9 meet the changing health care delivery system;

10 (3) Add beds in an intermediate care facility for individuals with an intellectual disability,  
 11 except that prohibition does not apply to an intermediate care facility for individuals with  
 12 intellectual disabilities beds approved under the Kanawha County circuit court order of August 3,  
 13 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284

14 S.E. 2d 232 (1981); and

15 (4) An opioid treatment ~~facility~~ or program.

**§16-2D-10. Exemptions from certificate of need.**

1 Notwithstanding section eight, a person may provide the following health services without  
2 obtaining a certificate of need or applying to the authority for approval:

3 (1) The creation of a private office of one or more licensed health professionals to practice  
4 in this state pursuant to chapter thirty of this code;

5 (2) Dispensaries and first-aid stations located within business or industrial establishments  
6 maintained solely for the use of employees that does not contain inpatient or resident beds for  
7 patients or employees who generally remain in the facility for more than twenty-four hours;

8 (3) A place that provides remedial care or treatment of residents or patients conducted  
9 only for those who rely solely upon treatment by prayer or spiritual means in accordance with the  
10 creed or tenets of any recognized church or religious denomination;

11 (4) Telehealth; and

12 (5) A facility owned or operated by one or more health professionals authorized or  
13 organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory or  
14 radiology, ultrasound, mammography to patients regardless of the cost associated with the  
15 proposal. To qualify for this exemption seventy-five percent of the laboratory services are for the  
16 patients of the practice or ambulatory health care facility of the total laboratory services performed  
17 and seventy-five percent of imaging services are for the patients of the practice or ambulatory  
18 health care facility of the total imaging services performed.

**§16-2D-11. Exemptions from certificate of need which require approval from the authority.**

1 (a) To obtain an exemption under this section a person shall:

2 (1) File an exemption application;

3 (2) Pay the \$1,000 application fee; and

4 (3) Provide a statement detailing which exemption applies and the circumstances justifying

5 the approval of the exemption.

6 (b) The authority has forty-five days to review the exemption request. The authority may  
7 not hold an administrative hearing to review the application. ~~An affected party~~ A person may not  
8 file an objection to the request for an exemption. The applicant may request or agree with the  
9 authority to a fifteen day extension of the timeframe. If the authority does not approve or deny the  
10 application within forty-five days, then the exemption is immediately approved. If the authority  
11 denies the approval of the exemption, only the applicant may appeal the authority's decision to  
12 the Office of Judges or refile the application with the authority. ~~The Office of Judges shall follow~~  
13 ~~the procedure provided in section sixteen to perform the review.~~

14 (c) Notwithstanding section eight and ten and except as provided in section nine, the  
15 Legislature finds that a need exists and these health services are exempt from the certificate of  
16 need process:

17 (1) A computed tomography scanner that is installed in a private office practice where at  
18 minimum seventy-five percent of the scans are for the patients of the practice and the fair market  
19 value of the installation and purchase is less than \$250,000 for calendar year 2016. The authority  
20 shall adjust the dollar amount specified in this subdivision annually and publish an update of the  
21 amount on or before December 31, of each year. The adjustment of the dollar amount shall be  
22 based on the DRI inflation index. ~~published in the Global Insight DRI/AWEFA Health Care Cost~~  
23 ~~Review~~ The authority may at any time request from the private office practice information  
24 concerning the number of patients who have been provided scans;

25 (2) (A) A birthing center established by a nonprofit primary care center that has a  
26 community board and provides primary care services to people in their community without regard  
27 to ability to pay; or

28 (B) A birthing center established by a nonprofit hospital with less than one hundred  
29 licensed acute care beds.

30 (i) To qualify for this exemption, an applicant shall be located in an area that is underserved



31 with respect to low-risk obstetrical services; and

32 (ii) Provide a proposed health service area.

33 (3) (A) A health care facility acquiring major medical equipment, adding health services or  
34 obligating a capital expenditure to be used solely for research;

35 (B) To qualify for this exemption, the health care facility shall show that the acquisition,  
36 offering or obligation will not:

37 (i) Affect the charges of the facility for the provision of medical or other patient care  
38 services other than the services which are included in the research;

39 (ii) Result in a substantial change to the bed capacity of the facility; or

40 (iii) Result in a substantial change to the health services of the facility.

41 (C) For purposes of this subdivision, the term "solely for research" includes patient care  
42 provided on an occasional and irregular basis and not as part of a research program;

43 (4) The obligation of a capital expenditure to acquire, either by purchase, lease or  
44 comparable arrangement, the real property, equipment or operations of a skilled nursing facility.

45 (5) Shared health services between two or more hospitals licensed in West Virginia  
46 providing health services made available through existing technology that can reasonably be  
47 mobile. This exemption does not include providing mobile cardiac catheterization;

48 (6) The acquisition, development or establishment of a certified interoperable electronic  
49 health record or electronic medical record system;

50 (7) The addition of forensic beds in a health care facility;

51 (8) A behavioral health service selected by the Department of Health and Human  
52 Resources in response to its request for application for services intended to return children  
53 currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-  
54 state facilities is not subject to a certificate of need;

55 (9) The replacement of major medical equipment with like equipment, only if the  
56 replacement major medical equipment cost is more than the expenditure minimum;

57 (10) Renovations within a hospital, only if the renovation cost is more than the expenditure  
58 minimum; The renovations may not expand the health care facility's current square footage, incur  
59 a substantial change to the health services, or a substantial change to the bed capacity;

60 (11) Renovations to a skilled nursing facility;

61 (12) The construction, development, acquisition or other establishment by a ~~licensed West~~  
62 ~~Virginia~~ hospital of an ambulatory health care facility in the county in which it is located; ~~and in a~~  
63 ~~contiguous county within or outside this state~~

64 (13) The donation of major medical equipment to replace like equipment for which a  
65 certificate of need has been issued and the replacement does not result in a substantial change  
66 to health services. This exemption does not include the donation of major medical equipment  
67 made to a health care facility by a related organization;

68 (14) A person providing specialized foster care personal care services to one individual  
69 and those services are delivered in the provider's home;

70 (15) A hospital converting the use of beds except a hospital may not convert a bed to a  
71 skilled nursing home bed and conversion of beds may not result in a substantial change to health  
72 services provided by the hospital;

73 (16) The construction, renovation, maintenance or operation of a state owned veterans  
74 skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

75 (17) A nonprofit community group designated by a county to develop and operate a  
76 ~~nursing home bed facility~~ skilled nursing facility with no more than thirty-six beds in any county in  
77 West Virginia that currently is without a skilled nursing facility;

78 (18) A critical access hospital, designated by the state as a critical access hospital, after  
79 meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if  
80 it reopens within ten years of its closure;

81 (19) The establishing of a health care facility or offering of health services for children under  
82 one year of age suffering from Neonatal Abstinence Syndrome;

83 (20) The construction, development, acquisition or other establishment of community  
84 mental health and intellectual disability facility;

85 (21) ~~Providing~~ Behavioral health facilities and services;

86 (22) The construction, development, acquisition or other establishment of kidney disease  
87 treatment centers, including freestanding hemodialysis units but only to a medically underserved  
88 population;

89 (23) The transfer, or acquisition of intermediate care or skilled nursing beds from an  
90 existing health care facility to a nursing home providing intermediate care and skilled nursing  
91 services.

92 (24) The construction, development, acquisition or other establishment by a health care  
93 facility of a nonhealth related project, only if the nonhealth related project cost is more than the  
94 expenditure minimum;

95 ~~(25) A facility owned or operated by one or more health professionals authorized or~~  
96 ~~organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory or~~  
97 ~~imaging services to patients regardless of the cost associated with the proposal. To qualify for~~  
98 ~~this exemption seventy five percent of the laboratory services are for the patients of the practice~~  
99 ~~or ambulatory health care facility of the total laboratory services performed and seventy five~~  
100 ~~percent of imaging services are for the patients of the practice or ambulatory health care facility~~  
101 ~~of the total imaging services performed~~

102 ~~(26)~~ (25) The construction, development, acquisition or other establishment of an alcohol  
103 or drug treatment facility and drug and alcohol treatment services unless the construction,  
104 development, acquisition or other establishment is an opioid treatment ~~facility or~~ program as set  
105 forth in subdivision (4) of section nine of this article;

106 ~~(27)~~ (26) Assisted living facilities and services; and

107 ~~(28)~~ (27) The creation, construction, acquisition or expansion of a community-based  
108 nonprofit organization with a community board that provides or will provide primary care services

109 to people without regard to ability to pay and receives approval from the Health Resources and  
110 Services Administration.

**§16-2D-13. Procedures for certificate of need reviews.**

1 (a) An application for a certificate of need shall be submitted to the authority prior to  
2 offering or ~~development of~~ developing a proposed health service.

3 (b) A person proposing a proposed health service shall:

4 (1) Submit a letter of intent ten days prior to submitting the certificate of need application.  
5 If the tenth day falls on a weekend or holiday, the certificate of need application shall be filed on  
6 the next business day. The information required within the letter of intent shall be detailed by the  
7 authority in legislative rule;

8 (2) Submit the appropriate application fee;

9 (A) Up to \$1,500,000 a fee of \$1,500.00;

10 (B) From \$1,500,001 to \$ 5,000,000 a fee of \$5,000.00;

11 (C) From \$5,000,001 to 25,000,000 a fee of \$25,000.00; and

12 (D) From \$25,000,001 and above a fee of \$35,000.00.

13 (3) Submit to the Director of the Office of Insurance Consumer Advocacy a copy of the  
14 application;

15 (c) The authority shall determine if the submitted application is complete within ten days  
16 of receipt of the application. The authority shall provide written notification to the applicant of this  
17 determination. If the authority determines an application to be incomplete, the authority may  
18 request additional information from the applicant.

19 (d) Within five days of receipt of a letter of intent, the authority shall provide notification to  
20 the public through a newspaper of general circulation in the area where the health service is being  
21 proposed and by placing of copy of the letter of intent on its website. The newspaper notice shall  
22 contain a statement that, further information regarding the application is on the authority's web  
23 site.

24 (e) The authority may batch completed applications for review on the fifteenth day of the  
25 month or the last day of month in which the application is deemed complete.

26 (f) When the application is submitted, ten days after filing the letter of intent, the application  
27 shall be placed on the authority's website.

28 (g) An affected party has thirty days starting from the date the application is batched to  
29 request the authority hold an administrative hearing.

30 (1) A hearing order shall be approved by the authority within fifteen days from the last day  
31 an affected person may requests an administrative hearing on a certificate of need application.

32 (2) A hearing shall take place no later than three months from that date the hearing order  
33 was approved by the authority.

34 (3) The authority shall conduct the administrative hearing in accordance with  
35 administrative hearing requirements in section twelve, article twenty-nine-b, chapter sixteen and  
36 article five, chapter twenty-nine-a of this code.

37 (4) In the administrative hearing an affected person has the right to be represented by  
38 counsel and to present oral or written arguments and evidence relevant to the matter which is the  
39 subject of the public hearing. An affected person may conduct reasonable questioning of persons  
40 who make factual allegations relevant to its certificate of need application.

41 (5) The authority shall maintain a verbatim record of the administrative hearing.

42 (6) After the commencement of the administrative hearing on the application and before a  
43 decision is made with respect to it, there may be no ex parte contacts between:

44 (A) The applicant for the certificate of need, any person acting on behalf of the applicant  
45 or holder of a certificate of need or any person opposed to the issuance of a certificate for the  
46 applicant; and

47 (B) Any person in the authority who exercises any responsibility respecting the application.

48 (7) The authority may not impose fees to hold the administrative hearing.

49 (8) The authority shall render a decision within forty-five days of the conclusion of the

50 administrative hearing.

51 (h) If an administrative hearing is not conducted during the review of an application, the  
52 authority shall provide a file closing date five days after an affected party may no longer request  
53 an administrative hearing, after which date no other factual information or evidence may be  
54 considered in the determination of the application for the certificate of need. A detailed itemization  
55 of documents in the authority's file on a proposed health service shall, on request, be made  
56 available by the authority at any time before the file closing date.

57 (i) The extent of additional information received by the authority from the applicant for a  
58 certificate of need after a review has begun on the applicant's proposed health service, with  
59 respect to the impact on the proposed health service and additional information which is received  
60 by the authority from the applicant, may be cause for the authority to determine the application to  
61 be a new proposal, subject to a new review cycle.

62 (j) The authority shall have five days to provide the written status update upon written  
63 request by the applicant or an affected person. The status update shall include the findings made  
64 in the course of the review and any other appropriate information relating to the review.

65 (k) (1) The authority shall annually prepare and publish to its website, a status report of  
66 each ongoing and completed certificate of need application reviews.

67 (2) For a status report of an ongoing review, the authority shall include in its report all  
68 findings made during the course of the review and any other appropriate information relating to  
69 the review.

70 (3) For a status report of a completed review, the authority shall include in its report all the  
71 findings made during the course of the review and its detailed reasoning for its final decision.

72 (l) The authority shall provide for access by the public to all applications reviewed by the  
73 authority and to all other pertinent written materials essential to agency review.

**§16-2D-16. Appeal of certificate of need a decision.**

1 (a) ~~The authority's final decision shall upon request of an affected person be reviewed by~~

2 ~~the Office of Judges~~ An applicant or an affected person may appeal the authority’s final decision  
 3 in a certificate of need review to the Office of Judges. The request shall be received within thirty  
 4 days after the date of the authority’s decision. The appeal hearing shall commence within thirty  
 5 days of receipt of the request.

6 (b) The Office of Judges shall conduct its proceedings in conformance with the West  
 7 Virginia Rules of Civil Procedure for trial courts of record and the local rules for use in the civil  
 8 courts of Kanawha County and shall review appeals in accordance with the provisions governing  
 9 the judicial review of contested administrative cases in article five, chapter twenty-nine-a of this  
 10 code.

11 (c) The decision of the Office of Judges shall be made in writing within forty-five days after  
 12 the conclusion of the hearing.

13 (d) The written findings of the Office of Judges shall be sent to the person who requested  
 14 the ~~review~~ appeal, to the person proposing the proposed health service and to the authority, and  
 15 shall be made available by the authority to others upon request.

16 (e) The decision of the Office of Judges shall be considered the final decision of the  
 17 authority; however, the Office of Judges may remand the matter to the authority for further action  
 18 or consideration.

19 (f) Upon the entry of a final decision by the Office of Judges, a person adversely affected  
 20 by the review may within thirty days after the date of the decision of the ~~review agency~~ Office of  
 21 Judges make an appeal in the circuit court of Kanawha County. The decision of the Office of  
 22 Judges shall be reviewed by the circuit court in accordance with the provisions for the judicial  
 23 review of administrative decisions contained in article five, chapter twenty-nine-a of this code.

**ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.**

**§16-5F-2. Definitions.**

1 As used in this article:

2 (1) “Annual report” means an annual financial report for the covered facility’s or related

3 organization's fiscal year prepared by an accountant or the covered facility's or related  
4 organization's Auditor.

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

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

17 (4) "Related organization" means an organization, whether publicly owned, nonprofit, tax-  
18 exempt or for profit, related to a covered facility through common membership, governing bodies,  
19 trustees, officers, stock ownership, family members, partners or limited partners, including, but  
20 not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes  
21 of this subdivision "family members" shall mean brothers and sisters whether by the whole or half  
22 blood, spouse, ancestors and lineal descendants.

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

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

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



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

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

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

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

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

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

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

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

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

1 (a) Every covered facility and upon the request of the authority, a related organization  
2 ~~defined in this article,~~ shall within one hundred twenty days after the end of each of their fiscal

3 years, unless an extension be granted by the ~~board~~ authority for good cause shown, ~~shall be~~  
4 ~~required to file with the board~~ authority and publish, as a Class I legal advertisement, pursuant to  
5 ~~section two, article three, chapter fifty-nine of the Code of West Virginia, in a qualified newspaper~~  
6 ~~published within the county within which such covered facility or related organization is located,~~  
7 an annual report prepared by the covered facility's or related organization's auditor or an  
8 independent accountant.

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

10 (1) Assets and liabilities;

11 (2) Income and expenses;

12 (3) Profit or loss for the period reported;

13 (4) A statement of ownership for persons owning more than five percent of the capital  
14 stock outstanding and the dividends paid thereon, if any, and to whom paid for the period reported  
15 unless the covered facility or related organization be duly registered on the New York stock  
16 exchange, American stock exchange, any regional stock exchange, or its stock traded actively  
17 over the counter. Such statement shall further contain a disclosure of ownership by any parent  
18 company or subsidiary, if applicable.

19 ~~Such~~ The annual report shall also include a prominent notice that ~~the details concerning~~  
20 ~~the contents of the advertisement, together with the other reports, statements and schedules~~  
21 ~~required to be filed with the board by the provisions of this section, shall be~~ upon filing with the  
22 authority, the report will be available for public inspection and copying at the ~~board's office~~  
23 authority's offices.

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

27 (1) ~~A statement of services available and services rendered;~~

28 (2) ~~A statement of the total financial needs of such covered facility or related organization~~

29 ~~and the resources available or expected to become available to meet such needs~~

30 ~~(3)~~ (1) A complete schedule of such covered facility's or related organization's then current  
31 rates with costs allocated to each category of costs, in accordance with the rules ~~and regulations~~  
32 as promulgated by the ~~board~~ authority pursuant to section three; ~~hereof~~

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

36 ~~(5)~~ (2) A statement of all charges, fees or salaries for goods or services rendered to the  
37 covered facility or related organization for the period reported which shall exceed in total the sum  
38 of ~~\$55,000~~ \$200,000 and a statement of all charges, fees or other sums collected by the covered  
39 facility or related organization for or on the account of any person, firm, partnership, corporation  
40 or other entity, however structured, which shall exceed in total the sum of ~~\$55,000~~ \$200,000  
41 during the period reported; and

42 ~~(6)~~ (3) Such other reports of the costs incurred in rendering services as the ~~board~~ authority  
43 may prescribe. The ~~board~~ authority may require the certification of specified financial reports by  
44 the covered facility's or related organization's auditor or independent accountant. ~~and~~

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

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

50 ~~(d)~~ (c) No report, statement, schedule or other filing required or permitted to be filed  
51 hereunder shall contain any medical or individual information personally identifiable to a patient  
52 or a consumer of health services, whether directly or indirectly. All such reports, statements and  
53 schedules filed with the ~~board~~ authority under this section shall be open to public inspection and  
54 shall be available for examination during regular hours. Copies of such reports shall be made

55 available to the public upon request and the ~~board~~ authority may establish fees reasonably  
 56 calculated to reimburse the ~~board~~ authority for its actual costs in making copies of such  
 57 reports. ~~Provided, That all tax returns filed pursuant to this article shall be confidential and it shall~~  
 58 ~~be unlawful for the board or any member of its staff to divulge or make known in any manner the~~  
 59 ~~tax return, or any part thereof, of any covered facility or related organization~~

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

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

#### **§16-5F-5. Injunctions.**

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

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

1 Every covered facility and related organization failing to make and transmit to the ~~board~~  
 2 authority any of the reports required by law or failing to publish or distribute the reports as so  
 3 required, shall forthwith be notified by the ~~board~~ authority and, if such failure continues for ten  
 4 days after receipt of said notice, such delinquent facility or organization shall be subject to a

5 penalty of \$1,000 for each day thereafter that such failure continues, such penalty to be recovered  
 6 by the ~~board~~ authority through the Attorney General in a civil action and paid into the State  
 7 Treasury to the account of the General Fund. Review of any final judgment or order of the circuit  
 8 court shall be by appeal to the West Virginia Supreme Court of Appeals.

## **ARTICLE 29B. HEALTH CARE AUTHORITY.**

### **§16-29B-3. Definitions.**

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

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

4 (a) "Authority" means the Health Care Authority created pursuant to the provisions of this  
 5 article;

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

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

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

16 ~~Authority, an autonomous division within the State Department of Health and Human Resources~~  
 17 (e) "Executive Director" or "Director" means the administrative head of the Health Care  
 18 Authority as set forth in section five-a of this article;

19 ~~(d)~~ (f) "Health care provider" means a person, partnership, corporation, facility, hospital or  
 20 institution licensed, certified or authorized by law to provide professional health care service in

21 this state to an individual during this individual's medical, remedial, or behavioral health care,  
22 treatment or confinement. For purposes of this article, "health care provider" shall not include the  
23 private office practice of one or more health care professionals licensed to practice in this state  
24 pursuant to the provisions of chapter thirty of this code;

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

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

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

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

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

43 (l) "Related organization" means an organization, whether publicly owned, nonprofit, tax-  
44 exempt or for profit, related to a health care provider through common membership, governing  
45 bodies, trustees, officers, stock ownership, family members, partners or limited partners including,  
46 but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the

47 purposes of this subsection family members means brothers and sisters, whether by the whole  
 48 or half blood, spouse, ancestors and lineal descendants;

49 (m) "Secretary" means the Secretary of the Department of Health and Human Resources;  
 50 and

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

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

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

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

6 (b) There is hereby created a board of review to serve as the adjudicatory body of the  
 7 authority and shall conduct all hearings as required in this article, article two-d of this chapter.

8 ~~(a)~~ (1) The board shall consist of ~~three~~ five members, appointed by the Governor, with the  
 9 advice and consent of the Senate. The board members are not permitted to hold political office in  
 10 the government of the state either by election or appointment while serving as a member of the  
 11 board. The board members are not eligible for civil service coverage as provided in section four,

12 article six, chapter twenty-nine of this code. The board members shall be citizens and residents  
13 of this state.

14 (2) No more than ~~two~~ three of the board members may be members of the same political  
15 party. One board member shall have a background in health care finance or economics, one  
16 board member shall have previous employment experience in human services, business  
17 administration or substantially related fields, one board member shall have previous experience  
18 in the administration of a health care facility, one board member shall have previous experience  
19 as a provider of health care services, and one board member shall be a consumer of health  
20 services with a demonstrated interest in health care issues.

21 (3) Each member appointed by the Governor shall serve staggered terms of six years.  
22 Any member whose term has expired shall serve until his or her successor has been appointed.  
23 Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall  
24 be eligible for reappointment. In cases of vacancy in the office of member, such vacancy shall be  
25 filled by the Governor in the same manner as the original appointment.

26 ~~(b)~~ (4) Each board member shall, before entering upon the duties of his or her office, take  
27 and subscribe to the oath provided by section five, article IV of the Constitution of the State of  
28 West Virginia, which oath shall be filed in the office of the Secretary of State.

29 (5) The Governor shall designate one of the board members to serve as chairman at the  
30 Governor's will and pleasure. ~~The chairman shall be the chief administrative officer of the board.~~

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

35 ~~(c)~~ (7) No person while in the employ of, or holding any official relation to, any hospital or  
36 health care provider subject to the provisions of this article, or who has any pecuniary interest in  
37 any hospital or health care provider, may serve as a member of the board ~~or as an employee of~~



38 ~~the board~~. Nor may any board member be a candidate for or hold public office or be a member of  
39 any political committee while acting as a board member; nor may any board member or employee  
40 of the board receive anything of value, either directly or indirectly, from any third-party payor or  
41 health care provider. If any of the board members become a candidate for any public office or for  
42 membership on any political committee, the Governor shall remove the board member from the  
43 board and shall appoint a new board member to fill the vacancy created. No board member or  
44 former board member may accept employment with any hospital or health care provider subject  
45 to the jurisdiction of the board in violation of the West Virginia governmental ethics act, chapter  
46 six-b of this code: *Provided*, That the act ~~shall~~ may not apply to employment accepted after  
47 termination of the board.

48 ~~(d)~~ (8) The concurrent judgment of ~~two~~ three of the board members ~~when in session as~~  
49 ~~the board~~ shall be considered the action of the board. A vacancy in the board ~~shall~~ does not affect  
50 the right or duty of the remaining board members to function as a board.

51 (9) Each member of the board shall serve without compensation, but shall receive  
52 expense reimbursement for all reasonable and necessary expenses actually incurred in the  
53 performance of the duties of the office, in the same amount paid to members of the Legislature  
54 for their interim duties as recommended by the citizens legislative compensation commission and  
55 authorized by law: *Provided*, That no member may be reimbursed for expenses paid by a third  
56 party.

**§16-29B-5a. Executive Director of the authority; powers and duties.**

1 (a) The Secretary shall appoint an executive director of the authority to supervise and  
2 direct the fiscal and administrative matters of the authority. This person shall be qualified by  
3 training and experience to direct the operations of the authority. The executive director is ineligible  
4 for civil service coverage as provided in section four, article six, chapter twenty-nine of this code  
5 and serves at the will and pleasure of the Secretary.

6 (b) The executive director shall:

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

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

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

13 (4) Report to the Secretary.

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

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

1 (a) The ~~board~~ authority shall at the direction and supervision of the Secretary and in  
2 cooperation with the bureaus and offices of the department as may be directed by the Secretary:  
3 Coordinate and oversee the health data collection of state agencies; lead state agencies' efforts  
4 to make the best use of emerging technology to effect the expedient and appropriate exchange  
5 of health care information and data, including patient records and reports; and coordinate  
6 database development, analysis and reporting to facilitate cost management, utilization review  
7 and quality assurance efforts by state payor and regulatory agencies, insurers, consumers,  
8 providers and other interested parties. Agencies of the state collecting health data shall work  
9 together through the ~~board~~ authority to develop an integrated system for the efficient collection,  
10 responsible use and dissemination of such data and to facilitate and support the development of  
11 statewide health information systems that will allow for the electronic transmittal of all health  
12 information and claims processing activities of state agencies within the state and that will  
13 coordinate the development and use of electronic health information systems within state  
14 government. The ~~board~~ authority, in cooperation with the bureaus and offices of the department  
15 as may be directed by the Secretary, shall establish minimum requirements and issue reports  
16 relating to information systems of all state health programs, including simplifying and  
17 standardizing forms, establishing information standards and reports for capitated managed care

18 programs to be managed by the ~~Insurance Commission~~ Office of the Insurance Commissioner,  
19 and shall develop a comprehensive system to collect ambulatory health care data. The ~~board~~  
20 authority is authorized to gain access to any health-related database in state government for the  
21 purposes of fulfilling its duties: *Provided, That*, for any database to which the ~~board~~ authority gains  
22 access, the use and dissemination of information from the database shall be subject to the  
23 confidentiality provisions applicable to such database.

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

32 (c) The ~~board's~~ staff of the authority, in cooperation with the bureaus and offices of the  
33 department as may be directed by the secretary, shall gather information on cost containment  
34 efforts, including, but not limited to, the provision of alternative delivery systems, prospective  
35 payment systems, alternative rate-making methods, and programs of consumer education. The  
36 ~~board~~ authority shall pay particular attention to the economic, quality of care and health status  
37 impact of such efforts on purchasers or classes of purchasers, particularly the elderly and those  
38 on low or fixed incomes.

39 (d) The ~~board~~ authority staff, in cooperation with the bureaus and offices of the department  
40 as may be directed by the secretary, shall further gather information on state-of-the-art advances  
41 in medical technology, the cost effectiveness of such advances and their impact on advances in  
42 health care services and management practices, and any other state-of-the-art concepts relating  
43 to health care cost containment, health care improvement or other issues the ~~board~~ authority finds

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

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

**§16-29B-7. Staff.**

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

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

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

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

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

19 (d) The ~~board~~ secretary shall identify which members of the staff of the ~~health care cost~~  
20 ~~review~~ authority shall be exempted from the salary schedules or pay plan adopted by the state

21 personnel board, and further identify such staff members by job classification or designation,  
 22 together with the salary or salary ranges for each such job classification or designation. This  
 23 information shall be filed by the ~~board~~ secretary with the Director of the Division of Personnel no  
 24 later than July 1, ~~1994~~ 2017, and thereafter as necessary.

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

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

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

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

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

21 ~~(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell,~~

22 ~~encumber and assign rights or dispose of any property, real or personal, consistent with the~~  
23 ~~objectives of the board as set forth in this article: Provided, That such acquisition or purchase of~~  
24 ~~real property or construction of facilities shall be consistent with planning by the state building~~  
25 ~~commissioner and subject to the approval of the Legislature~~

26 ~~(5)~~ (3) Contract and be contracted with and execute all instruments necessary or  
27 convenient in carrying out the ~~board's~~ authority's functions and duties; and

28 ~~(6)~~ (4) Exercise, subject to limitations or restrictions herein imposed, all other powers  
29 which are reasonably necessary or essential to effect the express objectives and purposes of this  
30 article.

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

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

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

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

**§16-29B-9. Annual report.**

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

**§16-29B-10. Jurisdiction of the ~~board~~ authority.**

1           Notwithstanding any other provision of this code or state law, after July 1, 2016, the  
2 jurisdiction of the board or authority as to rates for health services care ceases to exist.

3           The ~~board~~ authority, with the approval of the Secretary, shall propose rules for legislative  
4 approval in accordance with the provisions of article three, chapter twenty-nine-a of this code  
5 requiring hospitals, as part of its annual financial disclosure filings, to provide to the authority the  
6 average patient charge of the twenty-five most frequently used out-patient diagnostic services.  
7 The authority shall publish the information on its website expressed in terminology that can be  
8 understood by the general public.

**§16-29B-11. Related programs.**

1           In addition to carrying out its duties under this article, the ~~board~~ authority shall carry out  
2 its information disclosure functions set forth in article five-f of this chapter and its functions set  
3 forth in article two-d of this chapter, including health planning, issuing grants and loans to  
4 financially vulnerable health care entities located in underserved areas, and the review and

5 approval or disapproval of capital expenditures for health care facilities or services. In making  
6 decisions in the certificate of need review process, the ~~board~~ authority shall be guided by the state  
7 health plan approved by the ~~Governor~~ secretary.

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

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

7 (b) All pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to  
8 and govern the hearing and administrative procedures in connection with and following the  
9 hearing except as specifically stated to the contrary in this article. General counsel for the authority  
10 shall represent the interest of the authority at all hearings.

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

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

19 (e) After any hearing, after due deliberation, and in consideration of all the testimony, the  
20 evidence and the total record made, the board shall render a decision in writing. The written  
21 decision shall be accompanied by findings of fact and conclusions of law as specified in section



22 three, article five, chapter twenty-nine-a of this code, and the copy of the decision and  
23 accompanying findings and conclusions shall be served by certified mail, return receipt requested,  
24 upon the party demanding the hearing, and upon its attorney of record, if any.

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

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

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

1 Except for hearings conducted by the board pursuant to section twelve, the authority may  
2 conduct all other hearings as it deems necessary for the performance of its functions and shall  
3 hold hearings when required by the provisions of this chapter or upon a written demand therefor  
4 by a person aggrieved by any act or failure to act by the authority, or any rule or order of the  
5 authority, pursuant to article five, chapter twenty-nine-a of this code.

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

1 (a) A final decision of the board pursuant to section twelve and the record upon which it  
2 was made shall, upon request of any affected party, be reviewed by the agency of the state  
3 designated by the Governor to hear appeals under the provisions of article two-d of this chapter.  
4 To be effective, such request must be received within thirty days after the date upon which all  
5 parties received notice of the board decision, and the hearing shall commence within thirty days  
6 of receipt of the request.

7 (b) For the purpose of administrative review of board decisions pursuant to section twelve,  
8 the review agency shall conduct its proceedings in conformance with the West Virginia rules of  
9 civil procedure for trial courts of record and the local rules for use in the civil courts of Kanawha  
10 County and shall review appeals in accordance with the provisions governing the judicial review  
11 of contested administrative cases in section four, article five, chapter twenty-nine-a of this code,  
12 notwithstanding the exceptions of section five, article five, chapter twenty-nine-a of this code.

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

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

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

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

**§16-29B-14. Injunction; mandamus.**

1 The ~~board~~ authority may compel obedience to its lawful orders by injunction or mandamus  
2 or other proper proceedings in the name of the state in any circuit court having jurisdiction of the  
3 parties or of the subject matter, or the Supreme Court of Appeals direct, and such proceeding  
4 shall be determined in an expeditious manner.

**§16-29B-15. Refusal to comply.**

1 (a) Whenever a hospital fails or refuses to furnish to the ~~board~~ authority any records or

2 information requested under the provisions of this article or otherwise fails or refuses to comply  
3 with the requirements of this article or any reasonable rule and regulation promulgated by of the  
4 ~~board~~ authority under the provisions of this article, the ~~board~~ authority may make and enter an  
5 order of enforcement and serve a copy thereof on the hospital in question by certified mail, return  
6 receipt requested.

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

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

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

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

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

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

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

13 governmental agency or body.

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

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

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

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

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

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

32 (5) Efforts to encourage health care providers to control costs, including the elimination of  
33 unnecessary or duplicative facilities and services, promotion of alternative forms of care, and  
34 other cost control mechanisms.

**§16-29B-25. Public disclosure.**

1 From time to time, the ~~board~~ authority shall engage in or carry out analyses and studies  
2 relating to health care costs, the financial status of any health care provider subject to the  
3 provisions of this article or any other appropriate related matters, and it shall be empowered to

4 publish and disseminate any information which would be useful to members of the general public  
5 in making informed choices about health care providers.

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

1 Actions of the board authority shall be exempt from antitrust action under state and federal  
2 antitrust laws. Any actions of hospitals and health care providers under the ~~board's~~ authority's  
3 jurisdiction, when made in compliance with orders, directives, rules, approvals or regulations  
4 issued or promulgated by the board authority, shall likewise be exempt.

5 It is the intention of the Legislature that this chapter shall also immunize cooperative  
6 agreements approved and subject to supervision by the authority and activities conducted  
7 pursuant thereto from challenge or scrutiny under both state and federal antitrust law: *Provided,*  
8 That a cooperative agreement that is not approved and subject to supervision by the authority  
9 shall not have such immunity.

**ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.**

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

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

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

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

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

12 any duty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) One member with legal expertise in matters concerning the privacy and security of

38 health care information;

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

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

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

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

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

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

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

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

**§16-29G-4. Creation of the West Virginia Health Information Network account;**

**authorization of Health Care Authority to expend funds to support the network.**

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

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

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

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



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

**§16-29G-6. Property rights.**

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

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

NOTE: The purpose of this bill is to reorganize the West Virginia Health Care Authority and update provisions related to certificate of need, health care financial disclosures and the elimination rate review from the Health Care Authority powers and duties. The bill also repeals the West Virginia Health Care Authority Revolving Loan and Grant Fund.

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