

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 457**

BY SENATORS FERNS AND TAKUBO

[Introduce February 27, 2017; Referred  
to the Committee on Health and Human Resources;  
and then to the Committee on Finance]

1 A BILL to repeal §9-5-19 of the Code of West Virginia, 1931, as amended; to repeal §16-2D-1,  
2 §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-5c, §16-2D-5f, §16-2D-6, §16-2D-7,  
3 §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-12, §16-2D-13, §16-2D-14, §16-2D-  
4 15, §16-2D-16, §16-2D-17, §16-2D-18, §16-2D-19 and §16-2D-20 of said code; to repeal  
5 §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8,  
6 §16-29I-9 and §16-29I-10 of said code; to repeal §33-15B-5 of said code; to amend and  
7 reenact §5F-1-3a of said code; to amend and reenact §6-7-2a of said code; to amend and  
8 reenact §9-4C-7 and §9-4C-8 of said code; to amend and reenact §16-5B-17 of said code;  
9 to amend and reenact §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5 and §16-5F-6 of said  
10 code; to amend said code by adding a thereto new section, designated §16-5F-8; to  
11 amend and reenact §16-29B-28 of said code; to amend said code by adding thereto two  
12 new sections, designated §16-29B-30 and §16-29B-31; to amend and reenact §16-29G-  
13 1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7 and §16-29G-  
14 8 of said code; to amend and reenact §21-5F-4 of said code; and to amend and reenact  
15 §33-16D-16 of said code, all relating to the West Virginia Health Care Authority;  
16 eliminating the Health Care Authority; providing for an effective date for closure of the  
17 Health Care Authority; eliminating the salaries of board members from code; eliminating  
18 an outdated report; eliminating the Health Care Authority from the Health Care Provider  
19 Medicaid Enhancement Act; eliminating certificate of need; providing for an effective date  
20 for the elimination of certificate of need; providing that any pending applications for  
21 certificate of need are deemed approved following the effective date; continuing the  
22 moratorium on specified services; moving the Infection Control Advisory Panel to the  
23 Department of Health and Human Resources; transferring health care financial disclosure  
24 to the Department of Health and Human Resources; providing for an effective date for the  
25 transfer of the health care financial disclosure; requiring the Health Care Authority to  
26 develop a transition and closure plan; providing for an effective date for submittal of the

27 transition and closure plan; setting out required elements of the plan; transferring the state  
28 Privacy Office to the Office of the Governor; providing for an effective date for the transfer  
29 of the state Privacy Office; transferring the West Virginia Health Information Network to  
30 the Office of Technology; providing for an effective date for the transfer of the West Virginia  
31 Health Information Network; transferring funding of the West Virginia Health Information  
32 Network to the Office of Technology; transferring rule-making authority for the West  
33 Virginia Health Information Network from the Health Care Authority to the Office of  
34 Technology; providing for continuation of existing rules until amended, modified, repealed  
35 or superseded by the Office of Technology; modifying payment of administrative penalties  
36 for violation of the Nurse Overtime and Patient Safety Act into the General Revenue Fund;  
37 substituting the Insurance Commission for duties of the Health Care Authority relative to  
38 marketing and rate practices for small employer accident and sickness insurance policies;  
39 and making conforming amendments.

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

1 That §9-5-19 of the Code of West Virginia, 1931, as amended, be repealed; that §16-2D-  
2 1, §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-5c, §16-2D-5f, §16-2D-6, §16-2D-7, §16-  
3 2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-12, §16-2D-13, §16-2D-14, §16-2D-15, §16-2D-  
4 16, §16-2D-17, §16-2D-18, §16-2D-19 and §16-2D-20 of said code be repealed; that §16-29I-1,  
5 §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-  
6 29I-10 of said code be repealed; that §33-15B-5 of said code be repealed; that §5F-1-3a of said  
7 code be amended and reenacted; that §6-7-2a of said code be amended and reenacted; that §9-  
8 4C-7 and §9-4C-8 of said code be amended and reenacted; that §16-5B-17 of said code be  
9 amended and reenacted; that §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5 and §16-5F-6, of said  
10 code be amended and reenacted; that said code be amended by adding thereto a new section  
11 designated §16-5F-8; that §16-29B-28 of said code be amended and reenacted; that said code  
12 be amended by adding thereto two new sections designated §16-29B-30 and §16-29B-31; that

13 §16-29G-1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7 and §16-  
14 29G-8 of said code be amended and reenacted; that §21-5F-4 of said code be amended and  
15 reenacted; and §33-16D-16 of said code be amended and reenacted, all to read as follows:

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

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§5F-1-3a. 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 Insurance  
18 Agency; administrator, Alcohol Beverage Control Commission; commissioner, Division of Motor

19 Vehicles; director, Division of Personnel; Adjutant General; ~~chairman, Health Care Authority;~~  
 20 ~~members, Health Care Authority~~ director, Division of Rehabilitation Services; executive director,  
 21 educational broadcasting authority; executive secretary, Library Commission; chairman and  
 22 members of the Public Service Commission; director of emergency services; administrator,  
 23 division of human services; executive director, Human Rights Commission; director, division of  
 24 Veterans Affairs; director, office of miner's health safety and training; commissioner, Division of  
 25 Banking; commissioner, division of insurance; commissioner, Division of Culture and History;  
 26 commissioner, Division of Labor; director, Prosecuting Attorneys Institute; director, Board of Risk  
 27 and Insurance Management; commissioner, oil and gas conservation commission; director,  
 28 geological and economic survey; executive director, water development authority; executive  
 29 director, Public Defender Services; director, state rail authority; chairman and members of the  
 30 Parole Board; members, employment security review board; members, workers' compensation  
 31 appeal board; chairman, Racing Commission; executive director, women's commission; and  
 32 director, hospital finance authority.

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

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

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

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

1       (a) Each of the following appointive state officers named in this subsection shall be  
 2 appointed by the Governor, by and with the advice and consent of the Senate. Each of the

3 appointive state officers serves at the will and pleasure of the Governor for the term for which the  
4 Governor was elected and until the respective state officers' successors have been appointed  
5 and qualified. Each of the appointive state officers are subject to the existing qualifications for  
6 holding each respective office and each has and is hereby granted all of the powers and authority  
7 and shall perform all of the functions and services heretofore vested in and performed by virtue  
8 of existing law respecting each office.

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

10 Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections,  
11 \$80,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police,  
12 \$85,000; Commissioner, Division of Banking, \$75,000; Commissioner, Division of Culture and  
13 History, \$65,000; Commissioner, Alcohol Beverage Control Commission, \$75,000;  
14 Commissioner, Division of Motor Vehicles, \$75,000; ~~Chairman, Health Care Authority, \$80,000;~~  
15 ~~members, Health Care Authority, \$70,000~~ Director, Human Rights Commission, \$55,000;  
16 Commissioner, Division of Labor, \$70,000; prior to July 1, 2011, Director, Division of Veterans  
17 Affairs, \$65,000; Chairperson, Board of Parole, \$55,000; members, Board of Parole, \$50,000;  
18 members, Employment Security Review Board, \$17,000; and Commissioner, Workforce West  
19 Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows: Health  
20 and Human Resources, \$95,000: *Provided*, That effective July 1, 2013, the Secretary of the  
21 Department of Health and Human Resources shall be paid an annual salary not to exceed  
22 \$175,000; Transportation, \$95,000: *Provided, however*, That if the same person is serving as both  
23 the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid  
24 \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration,  
25 \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000;  
26 and Environmental Protection, \$95,000: *Provided further*, That any officer specified in this  
27 subsection whose salary is increased by more than \$5,000 as a result of the amendment and  
28 reenactment of this section during the 2011 regular session of the Legislature shall be paid the

29 salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum  
30 salary provided in this subsection.

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

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

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

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

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

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

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

**§9-4C-8. Duties of secretary of Department of Health and Human Resources.**

1 (a) The secretary, or his or her designee, shall serve on each board created pursuant to  
 2 this article as an ex officio, nonvoting member and shall keep and maintain records for each  
 3 board.

4 (b) In relation to outpatient hospital services, the secretary shall ~~cooperate with the health~~  
 5 ~~care cost review authority~~ to furnish information needed for reporting purposes. This information  
 6 includes, but is not limited to, the following:

7 (1) For each hospital, the amount of payments and related billed charges for hospital  
 8 outpatient services each month;

9 (2) The percentage of the state's share of Medicaid program financial obligation from time  
 10 to time as necessary; and

11 (3) Any other financial and statistical information necessary ~~for the health care cost review~~  
 12 ~~authority~~ to determine the net effect of any cost shift.

13 (c) The secretary shall determine an appropriate resolution for conflicts arising between  
 14 the various boards.

15 (d) The secretary shall purchase nationally published fee schedules to be used, if  
 16 available, as a reference by the Medicaid enhancement boards in developing fee schedules.

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

**§16-5B-17. Healthcare-associated infection reporting.**

1 (a) As used in this section, the following words mean:

2 (1) "Centers for Disease Control and Prevention" or "CDC" means the United States  
3 Department of Health and Human Services Centers for Disease Control and Prevention;

4 (2) "National Healthcare Safety Network" or "NHSN" means the secure Internet-based  
5 data collection surveillance system managed by the Division of Healthcare Quality Promotion at  
6 the CDC, created by the CDC for accumulating, exchanging and integrating relevant information  
7 on infectious adverse events associated with healthcare delivery.

8 (3) "Hospital" means hospital as that term is defined in subsection-e, section three, article  
9 twenty-nine-b, chapter sixteen.

10 (4) "Health care-associated infection" means a localized or systemic condition that results  
11 from an adverse reaction to the presence of an infectious agent or a toxin of an infectious agent  
12 that was not present or incubating at the time of admission to a hospital.

13 (5) "Physician" means a person licensed to practice medicine by either the board of  
14 Medicine or the board of osteopathy.

15 (6) "Nurse" means a person licensed in West Virginia as a registered professional nurse  
16 in accordance with article seven, chapter thirty.

17 (b) ~~The West Virginia Health Care Authority~~ Secretary of the Department of Health and  
18 Human Resources is hereby directed to create an Infection Control Advisory Panel whose duty is  
19 to provide guidance and oversight in implementing this section. The advisory panel shall consist  
20 of the following members:

21 (1) Two board-certified or board-eligible physicians, affiliated with a West Virginia hospital  
22 or medical school, who are active members of the Society for Health Care Epidemiology of  
23 America and who have demonstrated an interest in infection control;

24 (2) One physician who maintains active privileges to practice in at least one West Virginia  
25 hospital;

26 (3) Three infection control practitioners, two of whom are nurses, each certified by the  
27 Certification Board of Infection Control and Epidemiology, and each working in the area of  
28 infection control. Rural and urban practice must be represented;

29 (4) A statistician with an advanced degree in medical statistics;

30 (5) A microbiologist with an advanced degree in clinical microbiology;

31 (6) The Director of the Division of Disease Surveillance and Disease Control in the Bureau  
32 for Public Health or a designee; and

33 (7) The director of the hospital program in the office of health facilities, licensure and  
34 certification in the Bureau for Public Health.

35 (c) The advisory panel shall:

36 (1) Provide guidance to hospitals in their collection of healthcare-associated infections;

37 (2) Provide evidence-based practices in the control and prevention of healthcare  
38 associated infections;

39 (3) Establish reasonable goals to reduce the number of healthcare-associated infections;

40 (4) Develop plans for analyzing infection-related data from hospitals;

41 (5) Develop healthcare-associated advisories for hospital distribution;

42 (6) Review and recommend to the ~~West Virginia Health Care Authority~~ Secretary of the  
43 Department of Health and Human Resources the manner in which the reporting is made available  
44 to the public to assure that the public understands the meaning of the report; and

45 (7) Other duties as identified by the ~~West Virginia Health Care Authority~~ Secretary of the  
46 Department of Health and Human Resources.

47 (d) Hospitals shall report information on healthcare-associated infections in the manner  
48 prescribed by the CDC National Healthcare Safety Network(NHSN). The reporting standard  
49 prescribed by the CDC National Healthcare Safety Network(NHSN) ~~as adopted by the West~~  
50 ~~Virginia Health Care Authority~~ shall be the reporting system of the hospitals in West Virginia.

51 (e) Hospitals who fail to report information on healthcare associated infections in the

52 manner and time frame required by the ~~West Virginia Health Care Authority~~ Secretary of the  
 53 Department of Health and Human Resources shall be fined the sum of \$5,000 for each such  
 54 failure.

55 (f) The Infection Control Advisory Panel shall provide the results of the collection and  
 56 analysis of all hospital data to the ~~West Virginia Health Care Authority~~ Secretary of the Department  
 57 of Health and Human Resources for public availability and the Bureau for Public Health for  
 58 consideration in their hospital oversight and epidemiology and disease surveillance  
 59 responsibilities in West Virginia.

60 (g) Data collected and reported pursuant to this act may not be considered to establish  
 61 standards of care for any purposes of civil litigation in West Virginia.

62 ~~(h) The West Virginia Health Care Authority shall report no later than January 15 of each~~  
 63 ~~year to the Legislative Oversight committee on health and human resources accountability,~~  
 64 ~~beginning in the year 2011. This yearly report shall include a summary of the results of the~~  
 65 ~~required reporting and the work of the advisory panel~~

66 (i) ~~(h)~~ (h) The ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and  
 67 Human Resources shall require that all hospitals implement and initiate this reporting requirement  
 68 no later than July 1, 2009.

## ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

### §16-5F-2. Definitions.

1 As used in this article: The following words shall have the following meaning:

2 (1) "Annual report" ~~means~~ shall mean an annual financial report for the covered facility's  
 3 or related organization's fiscal year prepared by an accountant or the covered facility's or related  
 4 organization's Auditor.

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

6 ~~(3)~~ (2) "Covered facility" ~~means~~ shall mean any facility subject to the provisions of article  
 7 twenty-nine-b, section thirty of this chapter which would include a: hospital skilled nursing facility,

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

19 (3) "Rates" shall mean all rates, fees or charges imposed by any covered facility for health  
20 care services.

21 (4) "Records" includes accounts, books, charts, contracts, documents, files, maps, papers,  
22 profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or  
23 stored.

24 ~~(4)~~ (5) "Related organization" means shall mean an organization, whether publicly owned,  
25 nonprofit, tax-exempt or for profit, related to a covered facility through common membership,  
26 governing bodies, trustees, officers, stock ownership, family members, partners or limited  
27 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint  
28 ventures. For the purposes of this subdivision "family members" shall mean brothers and sisters  
29 whether by the whole or half blood, spouse, ancestors and lineal descendants.

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

32 ~~(6) "Records" includes accounts, books, charts, contracts, documents, files, maps, papers,~~  
33 ~~profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or~~

34 stored

35 (6) "Secretary" shall mean the Secretary of the West Virginia Department of Health and  
36 Human Resources.

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

**Powers and duties of the Secretary.**

1 ~~(a) In addition to the powers granted to the board elsewhere in this article, the board shall~~  
2 ~~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 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 shall also investigate and recommend to the Legislature whether other~~  
13 ~~health care providers should be made subject to the provisions of this article.~~

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

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

22 ~~chapter.~~

23 (a) In addition to the powers granted to the Secretary elsewhere in this article, the  
 24 Secretary shall have the powers and duties included in this section, to:

25 (1) Promulgate rules in accordance with the provisions of article three, chapter twenty-  
 26 nine-a of this code, to implement and make effective the powers, duties and responsibilities  
 27 contained in the provisions of this article.

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

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

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

34 (b) The Secretary shall, not later than December 31 of each year, prepare and transmit to  
 35 the Governor and to the clerks of both houses of the Legislature a report containing the material  
 36 and data as required by section four of this article, based upon the most recent data available.

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

1 (a) Every covered facility and related organization defined in this article, within one  
 2 hundred twenty days after the end of each of their fiscal years, unless an extension be granted  
 3 by the ~~board~~ Secretary for good cause shown, shall be required to file with the ~~board~~ Secretary  
 4 and publish, as a Class I legal advertisement, pursuant to section two, article three, chapter fifty-  
 5 nine of the Code of West Virginia, in a qualified newspaper published within the county within  
 6 which such covered facility or related organization is located, an annual report prepared by the  
 7 covered facility's or related organization's Auditor or an independent accountant.

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

9 (1) Assets and liabilities;



10 (2) Income and expenses;

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

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

18 (b) Such annual report shall also include a prominent notice that the details concerning  
19 the contents of the advertisement, together with the other reports, statements and schedules  
20 required to be filed with the ~~board~~ Secretary by the provisions of this section, shall be available  
21 for public inspection and copying at the ~~board's office~~ Secretary's office.

22 (b) (c) Every covered facility and related organization shall also file with the ~~board~~  
23 Secretary the following statements, schedules or reports in such form and at such intervals as  
24 may be specified by the ~~board~~ Secretary, but at least annually:

25 (1) A statement of services available and services rendered;

26 (2) A statement of the total financial needs of such covered facility or related organization  
27 and the resources available or expected to become available to meet such needs;

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

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

34 (5) A statement of all charges, fees or salaries for goods or services rendered to the  
35 covered facility or related organization for the period reported which shall exceed in total the sum

36 of \$55,000 and a statement of all charges, fees or other sums collected by the covered facility or  
37 related organization for or on the account of any person, firm, partnership, corporation or other  
38 entity, however structured, which shall exceed in total the sum of \$55,000 during the period  
39 reported;

40 (6) Such other reports of the costs incurred in rendering services as the ~~board~~ Secretary  
41 may prescribe. The ~~board~~ Secretary may require the certification of specified financial reports by  
42 the covered facility's or related organization's Auditor or independent accountant; and

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

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

48 ~~(d)~~ (e) No report, statement, schedule or other filing required or permitted to be filed  
49 hereunder shall contain any medical or individual information personally identifiable to a patient  
50 or a consumer of health services, whether directly or indirectly. All such reports, statements and  
51 schedules filed with the ~~board~~ Secretary under this section shall be open to public inspection and  
52 shall be available for examination during regular hours. Copies of such reports shall be made  
53 available to the public upon request and the ~~board~~ Secretary may establish fees reasonably  
54 calculated to reimburse the ~~board~~ Secretary for its actual costs in making copies of such reports. ~~;~~  
55 ~~Provided, That all~~ All tax returns filed pursuant to this article shall be confidential and it shall be  
56 unlawful for the ~~board~~ Secretary or any member of ~~its~~ his or her staff to divulge or make known in  
57 any manner the tax return, or any part thereof, of any covered facility or related organization.

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

62           (f) (g) From time to time, the ~~board~~ Secretary shall engage in or carry out analyses and  
 63 studies relating to health care costs, the financial status of any covered facility or related  
 64 organization or any other appropriate related matters, and make determinations of whether, in ~~its~~  
 65 his or her 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~~ Secretary, 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 Secretary 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~~ Secretary 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~~ Secretary 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.

**§16-5F-8. Effective date.**

1           The changes to this article made during the 2017 Regular Session of the Legislature are  
 2 effective on July 1, 2017. All functions, personnel and any remaining balance in state  
 3 appropriated funds relative to the provisions of this article shall transfer at that time to the state  
 4 General Revenue Fund.

**ARTICLE 29B. HEALTH CARE AUTHORITY.****§16-29B-28. Review of Cooperative agreements.**

1 (a) *Definitions.* — As used in this section the following terms have the following meanings:

2 (1) “Academic medical center” means an accredited medical school, one or more faculty  
3 practice plans affiliated with the medical school or one or more affiliated hospitals which meet the  
4 requirements set forth in 42 C. F. R. 411.355(e).

5 (2) “Cooperative agreement” means an agreement between a qualified hospital which is  
6 a member of an academic medical center and one or more other hospitals or other health care  
7 providers. The agreement shall provide for the sharing, allocation, consolidation by merger or  
8 other combination of assets, or referral of patients, personnel, instructional programs, support  
9 services and facilities or medical, diagnostic, or laboratory facilities or procedures or other  
10 services traditionally offered by hospitals or other health care providers.

11 (3) “Commercial health plan” means a plan offered by any third party payor that negotiates  
12 with a party to a cooperative agreement with respect to patient care services rendered by health  
13 care providers.

14 (4) “Health care provider” means the same as that term is defined in section three of this  
15 article.

16 (5) “Teaching hospital” means a hospital or medical center that provides clinical education  
17 and training to future and current health professionals whose main building or campus is located  
18 in the same county as the main campus of a medical school operated by a state university.

19 (6) “Qualified hospital” means a teaching hospital, which meets the requirements of 42 C.  
20 F. R. 411.355(e) and which has entered into a cooperative agreement with one or more hospitals  
21 or other health care providers but is not a critical access hospital for purposes of this section.

22 (b) *Findings.* —

23 (1) The Legislature finds that the state’s schools of medicine, affiliated universities and  
24 teaching hospitals are critically important in the training of physicians and other healthcare

25 providers who practice health care in this state. They provide access to healthcare and enhance  
26 quality healthcare for the citizens of this state.

27 (2) A medical education is enhanced when medical students, residents and fellows have  
28 access to modern facilities, state of the art equipment and a full range of clinical services and that,  
29 in many instances, the accessibility to facilities, equipment and clinical services can be achieved  
30 more economically and efficiently through a cooperative agreement among a teaching hospital  
31 and one or more hospitals or other health care providers.

32 (c) *Legislative purpose.* — The Legislature encourages cooperative agreements if the  
33 likely benefits of such agreements outweigh any disadvantages attributable to a reduction in  
34 competition. When a cooperative agreement, and the planning and negotiations of cooperative  
35 agreements, might be anticompetitive within the meaning and intent of state and federal antitrust  
36 laws the Legislature believes it is in the state's best interest to supplant such laws with regulatory  
37 approval and oversight by the ~~Health Care Authority~~ Attorney General as set out in this article.  
38 The ~~authority~~ Attorney General has the power to review, approve or deny cooperative  
39 agreements, ascertain that they are beneficial to citizens of the state and to medical education,  
40 to ensure compliance with the provisions of the cooperative agreements relative to the  
41 commitments made by the qualified hospital and conditions imposed by the ~~Health Care Authority~~  
42 Attorney General.

43 (d) *Cooperative Agreements.* —

44 (1) A hospital which is a member of an academic medical center may negotiate and enter  
45 into a cooperative agreement with other hospitals or health care providers in the state:

46 (A) In order to enhance or preserve medical education opportunities through collaborative  
47 efforts and to ensure and maintain the economic viability of medical education in this state and to  
48 achieve the goals hereinafter set forth; and

49 (B) When the likely benefits outweigh any disadvantages attributable to a reduction in  
50 competition that may result from the proposed cooperative agreement.

- 51 (2) The goal of any cooperative agreement would be to:
- 52 (A) Improve access to care;
- 53 (B) Advance health status;
- 54 (C) Target regional health issues;
- 55 (D) Promote technological advancement;
- 56 (E) Ensure accountability of the cost of care;
- 57 (F) Enhance academic engagement in regional health;
- 58 (G) Preserve and improve medical education opportunities;
- 59 (H) Strengthen the workforce for health-related careers; and
- 60 (I) Improve health entity collaboration and regional integration, where appropriate.
- 61 (3) A qualified hospital located in this state may submit an application for approval of a
- 62 proposed cooperative agreement to the ~~authority~~ Attorney General. The application shall state in
- 63 detail the nature of the proposed arrangement including the goals and methods for achieving:
- 64 (A) Population health improvement;
- 65 (B) Improved access to health care services;
- 66 (C) Improved quality;
- 67 (D) Cost efficiencies;
- 68 (E) Ensuring affordability of care; and
- 69 (F) Enhancing and preserving medical education programs. ~~and~~
- 70 ~~(G) Supporting the authority's goals and strategic mission, as applicable~~
- 71 (4) (A) If the cooperative agreement involves a combination of hospitals through merger,
- 72 consolidation or acquisition, the qualified hospital must have been awarded a certificate of need
- 73 for the project by the ~~authority~~ Health Care Authority, as set forth in article two-d of this chapter
- 74 prior to submitting an application for review of a cooperative agreement and prior to the repeal of
- 75 that section in the course of the 2017 Regular Session of the Legislature.
- 76 (B) ~~In addition to a certificate of need, the authority~~ The Attorney General may also require

77 that an application for review of a cooperative agreement as provided in this section be submitted  
78 and approved prior to the finalization of the cooperative agreement, if the cooperative agreement  
79 involves the merger, consolidation or acquisition of a hospital located within a distance of twenty  
80 highway miles of the main campus of the qualified hospital, and the ~~authority~~ Attorney General  
81 shall have determined that combination is likely to produce anti-competitive effects due to a  
82 reduction of competition. Any such determination shall be communicated to the parties to the  
83 cooperative agreement within seven days from approval of a certificate of need for the project if  
84 a certificate of need was required prior to the changes to article two-D of this code made during  
85 the 2017 Regular Session of the Legislature.

86 (C) In reviewing an application for cooperative agreement, the ~~authority~~ Attorney General  
87 shall give deference to the policy statements of the Federal Trade Commission.

88 (D) If an application for a review of a cooperative agreement is not required by the ~~authority~~  
89 Attorney General, the parties to the agreement may then complete the transaction following a  
90 final order by the ~~authority~~ Attorney General on the certificate of need as set forth in article two-d  
91 of this code if a certificate of need was required prior to the changes to article two-D of this code  
92 made during the 2017 Regular Session of the Legislature. The qualified hospital may apply to the  
93 ~~authority~~ Attorney General for approval of the cooperative agreement either before or after the  
94 finalization of the cooperative agreement.

95 (E) A party who has received a certificate of need prior to the enactment of this provision  
96 during the 2016 regular session of the Legislature may apply for approval of a cooperative  
97 agreement whether or not the transaction contemplated thereby has been completed.

98 (F) The complete record in the certificate of need proceeding if a certificate of need was  
99 required prior to the changes to article two-D of this code made during the 2017 Regular Session  
100 of the Legislature shall be part of the record in the proceedings under this section and information  
101 submitted by an applicant in the certificate of need proceeding need not be duplicated in  
102 proceedings under this section.

103 (e) *Procedure for review of cooperative agreements.* —

104 (1) Upon receipt of an application, the ~~authority~~ Attorney General shall determine whether  
105 the application is complete. If the ~~authority~~ Attorney General determines the application is  
106 incomplete, it shall notify the applicant in writing of additional items required to complete the  
107 application. A copy of the complete application shall be provided by the parties to the Office of  
108 the Attorney General simultaneous with the submission to the ~~authority~~ Attorney General. If an  
109 applicant believes the materials submitted contain proprietary information that is required to  
110 remain confidential, such information must be clearly identified and the applicant shall submit  
111 duplicate applications, one with full information for the ~~authority's~~ Attorney General's use and one  
112 redacted application available for release to the public.

113 (2) The ~~authority~~ Attorney General shall upon receipt of a completed application, publish  
114 notification of the application on its website as well as provide notice of such application placed  
115 in the State Register. The public may submit written comments regarding the application within  
116 ten days following publication. Following the close of the written comment period, the ~~authority~~  
117 Attorney General shall review the application as set forth in this section. Within thirty days of the  
118 receipt of a complete application the ~~authority~~ Attorney General may:

119 (i) Issue a certificate of approval which shall contain any conditions the ~~authority~~-Attorney  
120 General finds necessary for the approval;

121 (ii) Deny the application; or

122 (iii) Order a public hearing if the ~~authority~~ Attorney General finds it necessary to make an  
123 informed decision on the application.

124 (3) The ~~authority~~ Attorney General shall issue a written decision within seventy-five days  
125 from receipt of the completed application. The ~~authority~~ Attorney General may request additional  
126 information in which case they shall have an additional fifteen days following receipt of the  
127 supplemental information to approve or deny the proposed cooperative agreement.

128 (4) Notice of any hearing shall be sent by certified mail to the applicants and all persons,



129 groups or organizations who have submitted written comments on the proposed cooperative  
130 agreement as well as to all persons, groups or organizations designated as affected parties in the  
131 certificate of need proceeding if a certificate of need was required prior to the changes to article  
132 two-D of this code made during the 2017 Regular Session of the Legislature. Any individual, group  
133 or organization who submitted written comments regarding the application and wishes to present  
134 evidence at the public hearing shall request to be recognized as an affected party as set forth in  
135 article two-d of this chapter. The hearing shall be held no later than forty-five days after receipt of  
136 the application. The ~~authority~~ Attorney General shall publish notice of the hearing on the  
137 ~~authority's~~ Attorney General's website fifteen days prior to the hearing. The ~~authority~~ Attorney  
138 General shall additionally provide timely notice of such hearing in the State Register.

139 (5) Parties may file a motion for an expedited decision.

140 (f) *Standards for review of cooperative agreements.* —

141 (1) In its review of an application for approval of a cooperative agreement submitted  
142 pursuant to this section, the ~~authority~~ Attorney General may consider the proposed cooperative  
143 agreement and any supporting documents submitted by the applicant, any written comments  
144 submitted by any person and any written or oral comments submitted, or evidence presented, at  
145 any public hearing.

146 ~~(2) The authority shall consult with the Attorney General of this state regarding his or her~~  
147 ~~assessment of whether or not to approve the proposed cooperative agreement~~

148 ~~(3)~~ (2) The ~~authority~~ Attorney General shall approve a proposed cooperative agreement  
149 and issue a certificate of approval if it determines, with the written concurrence of the Attorney  
150 General, that the benefits likely to result from the proposed cooperative agreement outweigh the  
151 disadvantages likely to result from a reduction in competition from the proposed cooperative  
152 agreement.

153 ~~(4)~~ (3) In evaluating the potential benefits of a proposed cooperative agreement, the  
154 ~~authority~~ Attorney General shall consider whether one or more of the following benefits may result

155 from the proposed cooperative agreement:

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

158 (B) Enhancement of the quality of hospital and hospital-related care, including mental  
159 health services and treatment of substance abuse provided to citizens served by the ~~authority~~  
160 Attorney General;

161 (C) Enhancement of population health status consistent with the health goals established  
162 by the ~~authority~~ Attorney General;

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

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

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

167 (G) Avoidance of duplication of hospital resources;

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

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

170 ~~(5)~~ (4) The ~~authority's~~ Attorney General's evaluation of any disadvantages attributable to  
171 any reduction in competition likely to result from the proposed cooperative agreement shall  
172 include, but need not be limited to, the following factors:

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

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

181 cooperative agreement;

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

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

187 ~~(6)~~ (5) (A) After a complete review of the record, including, but not limited to, the factors  
188 set out in subsection (e) of this section, any commitments made by the applicant or applicants  
189 and any conditions imposed by the ~~authority~~ Attorney General, if the ~~authority~~ Attorney General  
190 determines that the benefits likely to result from the proposed cooperative agreement outweigh  
191 the disadvantages likely to result from a reduction in competition from the proposed cooperative  
192 agreement, the ~~authority~~ Attorney General shall approve the proposed cooperative agreement.

193 (B) The ~~authority~~ Attorney General may reasonably condition approval upon the parties'  
194 commitments to:

195 (i) Achieving improvements in population health;

196 (ii) Access to health care services;

197 (iii) Quality and cost efficiencies identified by the parties in support of their application for  
198 approval of the proposed cooperative agreement; and

199 (iv) Any additional commitments made by the parties to the cooperative agreement.

200 Any conditions set by the ~~authority~~ Attorney General shall be fully enforceable by the  
201 ~~authority~~ Attorney General. No condition imposed by the ~~authority~~ Attorney General, however,  
202 shall limit or interfere with the right of a hospital to adhere to religious or ethical directives  
203 established by its governing board.

204 ~~(7)~~ (6) The ~~authority's~~ Attorney General's decision to approve or deny an application shall  
205 constitute a final order or decision pursuant to the West Virginia Administrative Procedure Act (§  
206 29A-1-1, *et seq.*). The ~~authority~~ Attorney General may enforce commitments and conditions

207 imposed by the ~~authority~~ Attorney General in the circuit court of Kanawha County or the circuit  
208 court where the principal place of business of a party to the cooperative agreement is located.

209 (g) *Enforcement and supervision of cooperative agreements.* — The ~~authority~~ Attorney  
210 General shall enforce and supervise any approved cooperative agreement for compliance.

211 (1) The ~~authority~~ Attorney General is authorized to promulgate legislative rules in  
212 furtherance of this section. Additionally, the ~~authority~~ Attorney General shall promulgate  
213 emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a  
214 of this code to accomplish the goals of this section. These rules shall include, at a minimum:

215 (A) An annual report by the parties to a cooperative agreement. This report is required to  
216 include:

217 (i) Information about the extent of the benefits realized and compliance with other terms  
218 and conditions of the approval;

219 (ii) A description of the activities conducted pursuant to the cooperative agreement,  
220 including any actions taken in furtherance of commitments made by the parties or terms imposed  
221 by the ~~authority~~ Attorney General as a condition for approval of the cooperative agreement;

222 (iii) Information relating to price, cost, quality, access to care and population health  
223 improvement;

224 (iv) Disclosure of any reimbursement contract between a party to a cooperative agreement  
225 approved pursuant to this section and a commercial health plan or insurer entered into  
226 subsequent to the finalization of the cooperative agreement. This shall include the amount, if any,  
227 by which an increase in the average rate of reimbursement exceeds, with respect to inpatient  
228 services for such year, the increase in the Consumer Price Index for all Urban Consumers for  
229 hospital inpatient services as published by the Bureau of Labor Statistics for such year and, with  
230 respect to outpatient services, the increase in the Consumer Price Index for all Urban Consumers  
231 for hospital outpatient services for such year; and

232 (v) Any additional information required by the ~~authority~~ Attorney General to ensure

233 compliance with the cooperative agreement.

234 (B) If an approved application involves the combination of hospitals, disclosure of the  
235 performance of each hospital with respect to a representative sample of quality metrics selected  
236 annually by the ~~authority~~ Attorney General from the most recent quality metrics published by the  
237 Centers for Medicare and Medicaid Services. The representative sample shall be published by  
238 the ~~authority~~ Attorney General on its website.

239 (C) A procedure for a corrective action plan where the average performance score of the  
240 parties to the cooperative agreement in any calendar year is below the fiftieth percentile for all  
241 United States hospitals with respect to the quality metrics as set forth in (B) of this subsection.  
242 The corrective action plan is required to:

243 (i) Be submitted one hundred twenty days from the commencement of the next calendar  
244 year; and

245 (ii) Provide for a rebate to each commercial health plan or insurer with which they have  
246 contracted an amount not in excess of one percent of the amount paid to them by such  
247 commercial health plan or insurer for hospital services during such two-year period if in any two  
248 consecutive-year period the average performance score is below the fiftieth percentile for all  
249 United States hospitals. The amount to be rebated shall be reduced by the amount of any  
250 reduction in reimbursement which may be imposed by a commercial health plan or insurer under  
251 a quality incentive or awards program in which the hospital is a participant.

252 (D) A procedure where if the excess above the increase in the Consumer Price Index for  
253 all Urban Consumers for hospital inpatient services or hospital outpatient services is two percent  
254 or greater the ~~authority~~ Attorney General may order the rebate of the amount which exceeds the  
255 respective indices by two percent or more to all health plans or insurers which paid such excess  
256 unless the party provides written justification of such increase satisfactory to the ~~authority~~ Attorney  
257 General taking into account case mix index, outliers and extraordinarily high cost outpatient  
258 procedure utilizations.

259 (E) The ability of the ~~authority~~ Attorney General to investigate, as needed, to ensure  
260 compliance with the cooperative agreement.

261 (F) The ability of the ~~authority~~ Attorney General to take appropriate action, including  
262 revocation of a certificate of approval, if it determines that:

263 (i) The parties to the agreement are not complying with the terms of the agreement or the  
264 terms and conditions of approval;

265 (ii) The ~~authority's~~ Attorney General's approval was obtained as a result of an intentional  
266 material misrepresentation;

267 (iii) The parties to the agreement have failed to pay any required fee; or

268 (iv) The benefits resulting from the approved agreement no longer outweigh the  
269 disadvantages attributable to the reduction in competition resulting from the agreement.

270 (G) If the ~~authority~~ Attorney General determines the parties to an approved cooperative  
271 agreement have engaged in conduct that is contrary to state policy or the public interest, including  
272 the failure to take action required by state policy or the public interest, the ~~authority~~ Attorney  
273 General may initiate a proceeding to determine whether to require the parties to refrain from  
274 taking such action or requiring the parties to take such action, regardless of whether or not the  
275 benefits of the cooperative agreement continue to outweigh its disadvantages. Any determination  
276 by the ~~authority~~ Attorney General shall be final. The ~~authority~~ Attorney General is specifically  
277 authorized to enforce its determination in the circuit court of Kanawha County or the circuit court  
278 where the principal place of business of a party to the cooperative agreement is located.

279 (H) Fees as set forth in subsection (h).

280 (2) Until the promulgation of the emergency rules, the ~~authority~~ Attorney General shall  
281 monitor and regulate cooperative agreements to ensure that their conduct is in the public interest  
282 and shall have the powers set forth in subdivision (1) of this subsection, including the power of  
283 enforcement set forth in paragraph (G), subdivision (1) of this subsection.

284 (h) *Fees.* — The ~~authority~~ Attorney General may set fees for the approval of a cooperative

285 agreement. These fees shall be for all reasonable and actual costs incurred by the ~~authority~~  
286 Attorney General in its review and approval of any cooperative agreement pursuant to this section.  
287 These fees shall not exceed \$75,000. Additionally, the ~~authority~~ Attorney General may assess  
288 an annual fee not to exceed \$75,000 for the supervision of any cooperative agreement approved  
289 pursuant to this section and to support the implementation and administration of the provisions of  
290 this section.

291 (i) *Miscellaneous provisions.* —

292 (1) (A) An agreement entered into by a hospital party to a cooperative agreement and any  
293 state official or state agency imposing certain restrictions on rate increases shall be enforceable  
294 in accordance with its terms and may be considered by the ~~authority~~ Attorney General in  
295 determining whether to approve or deny the application. Nothing in this chapter shall undermine  
296 the validity of any such agreement between a hospital party and the Attorney General entered  
297 before the effective date of this legislation.

298 (B) At least ninety days prior to the implementation of any increase in rates for inpatient  
299 and outpatient hospital services and at least sixty days prior to the execution of any  
300 reimbursement agreement with a third party payor, a hospital party to a cooperative agreement  
301 involving the combination of two or more hospitals through merger, consolidation or acquisition  
302 which has been approved by the ~~authority~~ Attorney General shall submit any proposed increase  
303 in rates for inpatient and outpatient hospital services and any such reimbursement agreement to  
304 the Office of the West Virginia Attorney General together with such information concerning costs,  
305 patient volume, acuity, payor mix and other data as the Attorney General may request. Should  
306 the Attorney General determine that the proposed rates may inappropriately exceed competitive  
307 rates for comparable services in the hospital's market area which would result in unwarranted  
308 consumer harm or impair consumer access to health care, the Attorney General may request the  
309 ~~authority~~ Attorney General to evaluate the proposed rate increase and to provide its  
310 recommendations to the Office of the Attorney General. The Attorney General may approve,

311 reject or modify the proposed rate increase and shall communicate his or her decision to the  
312 hospital no later than 30 days prior to the proposed implementation date. The hospital may then  
313 only implement the increase approved by the Attorney General. Should the Attorney General  
314 determine that a reimbursement agreement with a third party payor includes pricing terms at anti-  
315 competitive levels, the Attorney General may reject the reimbursement agreement and  
316 communicate such rejection to the parties thereto together with the rationale therefor in a timely  
317 manner.

318 (2) The ~~authority~~ Attorney General shall maintain on file all cooperative agreements the  
319 ~~authority~~ Attorney General has approved, including any conditions imposed by the ~~authority~~  
320 Attorney General.

321 (3) Any party to a cooperative agreement that terminates its participation in such  
322 cooperative agreement shall file a notice of termination with the ~~authority~~ Attorney General thirty  
323 days after termination.

324 (4) No hospital which is a party to a cooperative agreement for which approval is required  
325 pursuant to this section may knowingly bill or charge for health services resulting from, or  
326 associated with, such cooperative agreement until approved by the ~~authority~~ Attorney General.  
327 Additionally, no hospital which is a party to a cooperative agreement may knowingly bill or charge  
328 for health services resulting from, or associated with, such cooperative agreement for which  
329 approval has been revoked or terminated.

330 (5) By submitting an application for review of a cooperative agreement pursuant to this  
331 section, the hospitals or health care providers shall be deemed to have agreed to submit to the  
332 regulation and supervision of the ~~authority~~ Attorney General as provided in this section.

**§16-29B-30. Health services that cannot be developed.**

1 The following services may not be developed:

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



4 eleven:

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

9 (3) Beds in an intermediate care facility for individuals with an intellectual disability, except  
10 that prohibition does not apply to an intermediate care facility for individuals with intellectual  
11 disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil  
12 action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232  
13 (1981); and

14 (4) An opioid treatment program.

**§16-29B-31. Applicability; transition and closure plan.**

1 (a) Notwithstanding any provision of this code to the contrary, effective December 31,  
2 2017, the Health Care Authority shall cease to exist. Any remaining functions of the Health Care  
3 Authority shall transfer at that time to the Department of Health and Human Resources.

4 (b) Notwithstanding any other provision of this code or state law to the contrary, after July  
5 1, 2017, the jurisdiction of the board or authority as to the administration of a certificate of need  
6 program for health services ceases to exist. Any pending request for a certificate of need which  
7 has not been decided as of that date shall be deemed approved.

8 (c) Any remaining balances as of December 31, 2017, in the accounts managed by the  
9 Health Care Authority shall be transferred to the state General Revenue Fund.

10 (d) The Health Care Authority shall develop and implement a transition and closure plan  
11 for concluding any and all pending matters at the Health Care Authority. The plan shall be  
12 submitted in writing to the Joint Committee on Government and Finance, the Governor, the  
13 Secretary of the Department of Health and Human Resources, the Secretary of the Department  
14 of Administration and the Division of Personnel. This plan shall be submitted no later than October

- 15 1, 2017. The plan shall include proposals for the following:
- 16 (1) Transition to appropriate entities or destruction of hard and electronic copies of files;
- 17 (2) In consultation with the Department of Administration, discontinuation of use of the  
 18 current building including termination of any lease or rental agreements;
- 19 (3) In consultation with the Department of Administration, disposition of all state owned or  
 20 leased office furniture and equipment, including any state owned vehicles;
- 21 (4) Closing out and transferring existing budget allocations;
- 22 (5) A transition plan developed in conjunction with the Division of Personnel for remaining  
 23 employees not transferred to other offices within state government;
- 24 (6) A plan to repeal all existing legislative rules made unnecessary by the elimination of  
 25 the Health Care Authority; and
- 26 (7) Any other matters which would effectively terminate the agency.
- 27 (8) Effective July 1, 2017, the state Privacy Office which was created pursuant to Executive  
 28 Order No. 6-06 and which is currently housed for administrative purposes within the Health Care  
 29 Authority shall be transferred to the Office of the Governor. Any staffing and funding associated  
 30 with the state Privacy Office shall, at that time, be so transferred.
- 31 (9) Upon the effective date of the changes to this article made during the course of the  
 32 2017 Regular Session of the Legislature, any function of the Health Care Authority not otherwise  
 33 eliminated or transferred shall become a function of the Department of Health and Human  
 34 Resources.

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

### **§16-29G-1. Purpose.**

- 1 (a) The purpose of this article is to create the West Virginia Health Information Network  
 2 under the oversight of the ~~Health Care Authority~~ Office of Technology within the Department of  
 3 Administration to promote the design, implementation, operation and maintenance of a fully  
 4 interoperable statewide network to facilitate public and private use of health care information in

5 the state. The amendments made to this article during the 2017 Regular Session of the  
6 Legislature transferring the West Virginia Health Information Network from the Health Care  
7 Authority to the Office of Technology shall be effective on the first day of July, 2017.

8 (b) It is intended that the network be a public-private partnership for the benefit of all of  
9 the citizens of this state.

10 (c) The network is envisioned to support and facilitate the following types of electronic  
11 transactions or activities:

- 12 (1) Automatic drug-drug interaction and allergy alerts;
- 13 (2) Automatic preventive medicine alerts;
- 14 (3) Electronic access to the results of laboratory, X ray, or other diagnostic examinations;
- 15 (4) Disease management;
- 16 (5) Disease surveillance and reporting;
- 17 (6) Educational offerings for health care providers;
- 18 (7) Health alert system and other applications related to homeland security;
- 19 (8) Links to evidence-based medical practice;
- 20 (9) Links to patient educational materials;
- 21 (10) Medical record information transfer to other providers with the patient's consent;
- 22 (11) Physician order entry;
- 23 (12) Prescription drug tracking;
- 24 (13) Registries for vital statistics, cancer, case management, immunizations and other  
25 public health registries;
- 26 (14) Secured electronic consultations between providers and patients;
- 27 (15) A single-source insurance credentialing system for health care providers;
- 28 (16) Electronic health care claims submission and processing; and
- 29 (17) Any other electronic transactions or activities as determined by legislative rules  
30 promulgated pursuant to this article.

31 (d) The network shall ensure the privacy of patient health care information.

**§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~~ Office of Technology for  
2 administrative, personnel and technical support purposes. The network shall be managed and  
3 operated by a board of directors. The board of directors is an independent, self-sustaining board  
4 with the powers 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~~ Secretary of the Department of Administration
- 29 or his or her designee;
- 30 (9) The President of the West Virginia Hospital Association or his or her designee;
- 31 (10) The President of the West Virginia State Medical Association or his or her designee;
- 32 (11) The Chief Executive Officer of the West Virginia Health Care Association or his or her
- 33 designee;
- 34 (12) The Executive Director of the West Virginia Primary Care Association or his or her
- 35 designee; and
- 36 (13) Five public members that serve at the will and pleasure of the Governor and are
- 37 appointed by the Governor with advice and consent of the Senate as follows:
- 38 ~~(i)~~(A) One member with legal expertise in matters concerning the privacy and security of
- 39 health care information;
- 40 ~~(ii)~~(B) Two physicians actively engaged in the practice of medicine in the state;
- 41 ~~(iii)~~(C) One member engaged in the business of health insurance who is employed by a
- 42 company that has its headquarters in West Virginia; and
- 43 ~~(iv)~~(D) The chief executive officer of a West Virginia corporation working with West Virginia
- 44 health care providers, insurers, businesses and government to facilitate the use of information
- 45 technology to improve the quality, efficiency and safety of health care for West Virginians.
- 46 (h) The Governor shall appoint one of the board members to serve as chair of the board
- 47 at the Governor's will and pleasure. The board shall annually select one of its members to serve
- 48 as vice chair. ~~The Chair of the Health Care Authority~~ Chief Technology Officer of the Office of
- 49 Technology shall serve as the secretary-treasurer of the board.

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

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

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

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

**§16-29G-3. Powers and duties.**

1 The network shall have the following duties:

2 (1) To develop a community-based health information network to facilitate communication  
3 of patient clinical and financial information designed to:

4 (A) Promote more efficient and effective communication among multiple health care  
5 providers, including, but not limited to, hospitals, physicians, payers, employers, pharmacies,  
6 laboratories and other health care entities;

7 (B) Create efficiencies in health care costs by eliminating redundancy in data capture and  
8 storage and reducing administrative, billing and data collection costs;

9 (C) Create the ability to monitor community health status; and

10 (D) Provide reliable information to health care consumers and purchasers regarding the  
11 quality and cost-effectiveness of health care, health plans and health care providers;

12 (2) To develop or design other initiatives in furtherance of the network's purpose;

13 (3) To report and make recommendations to the ~~Health Care Authority~~ Office of  
 14 Technology.

15 The network is granted all other incidental powers, including, but not limited to, the  
 16 following:

17 (A) Make and enter into all contracts and agreements and execute all instruments  
 18 necessary or incidental to the performance of its duties and the execution of its powers, subject  
 19 to the availability of funds: *Provided*, That the provisions of article three, chapter five-a of this code  
 20 do not apply to the agreements and contracts executed under the provisions of this article;

21 (B) Acquire by gift or purchase, hold or dispose of real and personal property in the  
 22 exercise of its powers and performance of its duties as set forth in this article;

23 (C) Receive and dispense funds appropriated for its use by the Legislature or other funding  
 24 sources or solicit, apply for and receive any funds, property or services from any person,  
 25 governmental agency or organization to carry out its statutory duties;

26 (D) Represent the state with respect to national health information network initiatives;

27 (E) Perform any and all other activities in furtherance of its purpose or as directed by the  
 28 ~~Health Care Authority~~ Office of Technology.

**§16-29G-4. Creation of the West Virginia Health Information Network account;  
 authorization of ~~Health Care Authority~~ Office of Technology 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~~

17 (b) Consistent with section four, article six of chapter five-b of this code, the Chief  
18 Technology Officer's provision of administrative, personnel, technical and other forms of support  
19 to the network is necessary to support the activities of the Office of Technology and constitutes a  
20 legitimate, lawful purpose of the Office of Technology. Therefore, the Chief Technology Officer is  
21 hereby authorized to expend funds from its Chief Technology Officer Administrative Fund,  
22 established pursuant to section four, article six of chapter five-b of this code, to support the  
23 network's administrative, personnel and technical needs and any other network activities the  
24 Office of Technology 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 Health Care Authority Office



8 of Technology. In addition, no person is subject to antitrust or unfair competition liability based on  
9 membership or participation in the network, which provides an essential governmental function  
10 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 the ~~Health Care Authority~~ Office of Technology.

**§16-29G-7. Legislative rule-making authority; resolution of disputes.**

1 (a) The ~~Health Care Authority~~ Office of Technology is hereby authorized to propose rules  
2 under and pursuant to article twenty-nine-b of this chapter to carry out the objectives of this article.  
3 Any rules promulgated by the Health Care Authority prior to the enactment of the changes to this  
4 article during the 2017 Regular Session of the Legislature shall be transferred to the Office of  
5 Technology for purposes of enforcement and shall remain effective until such time as repealed,  
6 amended, modified or superseded.

7 (b) To resolve disputes under this article or the rules proposed herein among participants,  
8 subscribers or the public, the ~~Health Care Authority~~ Office of Technology is hereby authorized to  
9 conduct hearings and render decisions under and pursuant to section twelve, article twenty-nine-  
10 b of this chapter.

**§16-29G-8. Privacy; protection of information.**

1 (a) The ~~Health Care Authority~~ Office of Technology shall ensure that patient specific  
2 protected health information be disclosed only in accordance with the patient's authorization or

3 best interest to those having a need to know, in compliance with state confidentiality laws and the  
4 Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations  
5 under the act.

6 (b) The health information, data and records of the network shall be exempt from  
7 disclosure under the provisions of chapter twenty-nine-b of this code.

## **CHAPTER 21. LABOR.**

### **ARTICLE 5. NURSE OVERTIME AND PATIENT SAFETY ACT.**

#### **§21-5F-4. Enforcement; offenses and penalties.**

1 (a) Pursuant to the powers set forth in article one of this chapter, the Commissioner of  
2 Labor is charged with the enforcement of this article. The commissioner shall propose legislative  
3 and procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of  
4 this code to establish procedures for enforcement of this article. These rules shall include, but are  
5 not limited to, provisions to protect due process requirements, a hearings procedure, an appeals  
6 procedure, and a notification procedure, including any signs that must be posted by the facility.

7 (b) Any complaint must be filed with the commissioner regarding an alleged violation of the  
8 provisions of this article must be made within thirty days following the occurrence of the incident  
9 giving rise to the alleged violation. The commissioner shall keep each complaint anonymous until  
10 the commissioner finds that the complaint has merit. The commissioner shall establish a process  
11 for notifying a hospital of a complaint.

12 (c) The administrative penalty for the first violation of this article is a reprimand.

13 (d) The administrative penalty for the second offense of this article is a reprimand and a  
14 fine not to exceed \$500.

15 (e) The administrative penalty for the third and subsequent offenses is a fine of not less  
16 than \$2,500 and not more than \$5,000 for each violation.

17 (f) To be eligible to be charged of a second offense or third offense under this section, the

18 subsequent offense must occur within twelve months of the prior offense.

19 (g) ~~(4)~~ All moneys paid as administrative penalties pursuant to this section shall be  
 20 deposited into the ~~Health Care Cost Review Fund provided by section eight, article twenty-nine-~~  
 21 ~~b, chapter sixteen of this code~~ General Revenue Fund.

22 ~~(2) In addition to other purposes for which funds may be expended from the Health Care~~  
 23 ~~Cost Review Fund, the West Virginia Health Care Authority shall expend moneys from the fund,~~  
 24 ~~in amounts up to but not exceeding amounts received pursuant to subdivision (1) of this~~  
 25 ~~subsection, for the following activities in this state:~~

26 (A) ~~Establishment of scholarships in medical schools;~~

27 (B) ~~Establishment of scholarships for nurses training;~~

28 (C) ~~Establishment of scholarships in the public health field;~~

29 (D) ~~Grants to finance research in the field of drug addiction and development of cures~~  
 30 ~~therefor;~~

31 (E) ~~Grants to public institutions devoted to the care and treatment of narcotic addicts; and~~

32 (F) ~~Grants for public health research, education and care.~~

## **CHAPTER 33. INSURANCE.**

### **ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.**

#### **§33-16D-16. Authorization of uninsured small group health benefit plans.**

1 (a) Upon filing with and approval by the commissioner, any carrier licensed pursuant to  
 2 this chapter which accesses a health care provider network to deliver services may offer a health  
 3 benefit plan and rates associated with the plan to a small employer subject to the conditions of  
 4 this section and subject to the provisions of this article. The health benefit plan is subject to the  
 5 following conditions:

6 (1) The health benefit plan may be offered by the carrier only to small employers which

7 have not had a health benefit plan covering their employees for at least six consecutive months  
8 before the effective date of this section. After the passage of six months from the effective date  
9 of this section, the health benefit plan under this section may be offered by carriers only to small  
10 employers which have not had a health benefit plan covering their employees for twelve  
11 consecutive months;

12 (2) If a small employer covered by a health benefit plan offered pursuant to this section no  
13 longer meets the definition of a small employer as a result of an increase in eligible employees,  
14 that employer shall remain covered by the health benefit plan until the next annual renewal date;

15 (3) The small employer shall pay at least fifty percent of its employees' premium amount  
16 for individual employee coverage;

17 (4) The commissioner shall promulgate emergency rules under the provisions of article  
18 three, chapter twenty-nine-a of this code on or before September 1, 2004, to place additional  
19 restrictions upon the eligibility requirements for health benefit plans authorized by this section in  
20 order to prevent manipulation of eligibility criteria by small employers and otherwise implement  
21 the provisions of this section;

22 (5) Carriers must offer the health benefit plans issued pursuant to this section through one  
23 of their existing networks of health care providers;

24 (A) The ~~West Virginia Health Care Authority~~ Insurance Commission shall, on or before  
25 May 1, 2004, and each year thereafter, by regular mail, provide a written notice to all known in-  
26 state health care providers that:

27 (i) Informs the health care provider regarding the provisions of this section; and

28 (ii) Notifies the health care provider that if the health care provider does not give written  
29 refusal to the ~~West Virginia Health Care Authority~~ Insurance Commission within thirty days from  
30 receipt of the notice or the health care provider has not previously filed a written notice of refusal  
31 to participate, the health care provider must participate with and accept the products and provider  
32 reimbursements authorized pursuant to this section;

33 (B) The carrier's network of health care providers, as well as any health care provider  
34 which provides health care goods or services to beneficiaries of any departments or divisions of  
35 the state, as identified in article twenty-nine-d, chapter sixteen of this code, shall accept the health  
36 care provider reimbursement rates set pursuant to this section unless the health care provider  
37 gives written refusal to the ~~West Virginia Health Care Authority~~ Insurance Commission between  
38 May 1 and June 1 that the provider will not participate in this program for the next calendar year.  
39 Notwithstanding any provision of this code to the contrary, health care providers may not be  
40 mandated to participate in this program except under the opt-out provisions of subdivision (5),  
41 subsection (a) of this section and therefore the health care provider shall annually have the ability  
42 to file with the ~~West Virginia Health Care Authority~~ Insurance Commission written notice that the  
43 health care provider will not participate with products issued pursuant to this section. Once a  
44 health care provider has filed a notice of refusal with the ~~West Virginia Health Care Authority~~  
45 Insurance Commission, the notice shall remain effective until rescinded by the provider and the  
46 provider shall not be required to renew the notice each year;

47 (C) ~~The West Virginia Health Care Authority~~ Insurance Commission is responsible for  
48 receiving the responses, if any, from the health care providers that have elected not to participate  
49 and for providing a list to the commissioner of those health care providers that have elected not  
50 to participate;

51 (D) Those health care providers that do not file a notice of refusal shall be considered to  
52 have accepted participation in this program and to accept Public Employees Insurance Agency  
53 health care provider reimbursement rates for their services as set by this section;

54 (E) Health care provider reimbursement rates used by the carrier for a health benefit plan  
55 offered pursuant to this section shall have no effect on provider rates for other products offered  
56 by the carrier and most-favored-nation clauses do not apply to the rates;

57 (6) With respect to the health benefit plans authorized by this section, the carrier shall  
58 reimburse network health care providers at the same health care provider reimbursement rates

59 in effect for the managed care and health maintenance organization plans offered by the West  
60 Virginia Public Employees Insurance Agency. Beginning in the year 2004, and in each year  
61 thereafter, the health care provider reimbursement rates set under this section may not be  
62 lowered from the level of the rates in effect on July 1 of that year for the managed care and health  
63 maintenance plans offered by the Public Employees Insurance Agency. While it is the intent of  
64 this paragraph to govern rates for plans offered pursuant to this section for annual periods, this  
65 subdivision in no way prevents the Public Employees Insurance Agency from making provider  
66 reimbursement rate adjustments to Public Employees Insurance Agency plans during the course  
67 of each year. If there is a dispute regarding the determination of appropriate rates pursuant to this  
68 section, the Director of the Public Employees Insurance Agency shall, in his or her sole discretion,  
69 specify the appropriate rate to be applied;

70 (A) The health care provider reimbursement rates as authorized by this section shall be  
71 accepted by the health care provider as payment in full for services or products provided to a  
72 person covered by a product authorized by this section;

73 (B) Except for the health care provider rates authorized under this section, a carrier's  
74 payment methodology, including copayments and deductibles and other conditions of coverage,  
75 remains unaffected by this section;

76 (C) The provisions of this section do not require the Public Employees Insurance Agency  
77 to give carriers access to the purchasing networks of the Public Employees Insurance Agency.  
78 The Public Employees Insurance Agency may enter into agreements with carriers offering health  
79 benefit plans under this section to permit the carrier, at its election, to participate in drug  
80 purchasing arrangements pursuant to article sixteen-c, chapter five of this code, including the  
81 multistate drug purchasing program. This paragraph provides authorization of the agreements  
82 pursuant to section four of said article;

83 (7) Carriers may not underwrite products authorized by this section more strictly than other  
84 small group policies governed by this article;

85           (8) With respect to health benefit plans authorized by this section, a carrier shall have a  
86 minimum anticipated loss ratio of seventy-seven percent to be eligible to make a rate increase  
87 request after the first year of providing a health benefit plan under this section;

88           (9) Products authorized under this section are exempt from the premium taxes assessed  
89 under sections fourteen and fourteen-a, article three of this chapter;

90           (10) A carrier may elect to nonrenew any health benefit plan to an eligible employer if, at  
91 any time, the carrier determines, by applying the same network criteria which it applies to other  
92 small employer health benefit plans, that it no longer has an adequate network of health care  
93 providers accessible for that eligible small employer. If the carrier makes a determination that an  
94 adequate network does not exist, the carrier has no obligation to obtain additional health care  
95 providers to establish an adequate network;

96           (11) Upon thirty days' advance notice to the commissioner, a carrier may, at any time,  
97 elect to nonrenew all health benefit plans issued pursuant to this section. If a carrier nonrenews  
98 all its business issued pursuant to this section for any reason other than the adequacy of the  
99 provider network, the carrier may not offer this health benefit plan to any eligible small employer  
100 for a period of at least two years after the last eligible small employer is nonrenewed; and

101           (12) The Insurance Commissioner may not approve any health benefit plan issued  
102 pursuant to this section until it has obtained any necessary federal governmental authorizations  
103 or waivers. The Insurance Commissioner shall apply for and obtain all necessary federal  
104 authorizations or waivers.

105           (b) Health benefit plans authorized by this section are not intended to violate the  
106 prohibition set out in subsection (a), section four of this article.

107           (c) Carriers offering health benefit plans pursuant to this section shall annually or before  
108 December 1 of each year report in a form acceptable to the commissioner the number of health  
109 benefit plans written by the carrier and the number of individuals covered under the health benefit  
110 plans.

111 (d) To the extent that provisions of this section differ from those contained elsewhere in  
112 this chapter, the provisions of this section control.

NOTE: The purpose of this bill is to eliminate the Health Care Authority and Certificate of Need and to transfer the state Privacy Office to the Office of the Governor and transfer the West Virginia Health Information Network to the Office of Technology and to make conforming amendments.

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