

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2523

**FISCAL
NOTE**

BY DELEGATES FOLK, MCGEEHAN, PAYNTER, WILSON,

GEARHEART, PHILLIPS AND DEAN

[Introduced February 16, 2017;

Referred to the Committee on Health and Human

Resources then the Judiciary.]

1 A BILL to repeal §9-5-19 of the Code of West Virginia,1931, as amended; to repeal §16-2D-2,
 2 §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-5c; §16-2D-5f; §16-2D-6, §16-2D-7, §16-2D-8,
 3 §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-12, §16-2D-13, §16-2D-14, §16-2D-15, §16-
 4 2D-16, §16-2D-17, §16-2D-18, §16-2D-19, §16-2D-20 of said code; to repeal §16-2N-3 of
 5 said code; to repeal §16-5Y-12 of said code; to repeal §16-29A-20 of said code; to repeal
 6 §49-2-124 of said code; to amend and reenact §16-2D-1 of said code; to amend and
 7 reenact §16-2E-2 of said code; to amend and reenact §16-5Y-3 and §16-5Y-4 of said
 8 code; to amend and reenact §16-29B-1, §16-29B-3, §16-29B-8, §16-29B-11 and §16-
 9 29B-28 of said code; and to amend and reenact §33-15B-5 of said code, all relating to
 10 eliminating the certificate of need program and deleting references to the certificate of
 11 need program throughout the code.

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1 That §9-5-19 of the Code of West Virginia,1931, as amended, be repealed; that §16-2D-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 2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-5c; §16-2D-5f; §16-2D-6, §16-2D-7, §16-2D-8, §16-
 3 2D-9, §16-2D-10, §16-2D-11, §16-2D-12, §16-2D-13, §16-2D-14, §16-2D-15, §16-2D-16, §16-
 4 2D-17, §16-2D-18, §16-2D-19 and §16-2D-20 of said code be repealed; that §16-2N-3 of said
 5 code be repealed; that §16-5Y-12 of said code be repealed; that §16-29A-20 of said code be
 6 repealed; that §49-2-124 of said code be repealed; that §16-2D-1 of said code be amended and
 7 reenacted; that §16-2E-2 of said code be amended and reenacted; that §16-5Y-3 and §16-5Y-4
 8 of said code be amended and reenacted; that §16-29B-1, §16-29B-3, §16-29B-8, §16-29B-11
 9 and §16-29B-28 of said code be amended and reenacted; and that §33-15B-5 of said code be
 10 amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-1. Certificate of need program terminated.

1 (a) Notwithstanding any other provision of this code, the certificate of need program
2 previously authorized by this article is terminated. A health care facility may not be required to
3 obtain a certificate of need or similar authorization before operating in this state.

4 (b) All of the authority's rules previously promulgated pursuant to this article that are not
5 in conflict with the provisions of this section shall remain in effect until the authority promulgates
6 new rules pursuant to section eleven, article twenty-nine-b, chapter sixteen of this code.

7 (c) For the purposes of this section, "health care facility" means a publicly or privately
8 owned facility, agency or entity that offers or provides health services, whether a for-profit or
9 nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part.

ARTICLE 2E. BIRTHING CENTERS.

§16-2E-2. Birthing centers to obtain license, application, fees, suspension, or revocation.

1 No person, partnership, association or corporation, or any local governmental unit or any
2 division, department, board or agency thereof may operate a birthing center unless such operation
3 shall have been approved and licensed by the state director of health in accordance with the
4 provisions of this article and the rules and regulations lawfully promulgated hereunder. ~~provided~~
5 ~~that all birthing centers which are in operation or which have received a certificate of need valid~~
6 ~~as of the date of passage of this act shall be deemed to have been so approved and shall be~~
7 ~~issued a license within thirty days of passage of this act~~

8 Any person, partnership, association or corporation, or any local governmental unit or any
9 division, department, board or agency thereof desiring a license hereunder shall file with the
10 department of health an application in such form as the department shall prescribe and furnish
11 accompanied by a fee of \$10. Information received by the department of health under the
12 provisions of this section shall be confidential. The director of health is authorized to issue licenses
13 for the operation of birthing centers which are found to comply with the provisions of this article
14 and with all rules and regulations promulgated by the department. The license issued shall not be
15 transferred or assignable. The director of health is authorized to suspend or revoke a license

16 issued hereunder if the provisions of this article or of the rules and regulations are violated.

17 Before any such license is suspended or revoked, however, written notice shall be given
18 the licensee, stating the grounds of the complaint, and the date, time and place set for the hearing
19 on the complaint, which date shall not be less than thirty days from the time notice is given. Such
20 notice shall be sent by registered mail to the licensee at the address where the institution
21 concerned is located. The licensee shall be entitled to be represented by legal counsel at the
22 hearing.

23 If a license is revoked as herein provided, a new application for a license shall be
24 considered by the director of health if, when and after, the conditions upon which revocation was
25 based have been corrected and evidence of this fact has been furnished. A new license shall then
26 be granted after proper inspection has been made and all provisions of this article and rules and
27 regulations promulgated hereunder have been satisfied.

28 All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply
29 to and govern any hearing authorized and required by the provisions of this article and the
30 administrative procedure in connection with and following any such hearing, with like effect as if
31 the provisions of said article five were set forth in extenso in this section.

32 The court shall have the power to affirm, modify or reverse the decision of the department
33 and either the applicant or licensee or the department may appeal from the court's decision to the
34 Supreme Court of Appeals. Pending the final disposition of the matter the status quo of the
35 applicant or licensee shall be preserved.

36 Any applicant or licensee who is dissatisfied with the decision of the State Department of
37 Health as a result of the hearing provided in this section may, within thirty days after receiving
38 notice of the decision, appeal to the circuit court, in term or in vacation, of the county in which the
39 applicant or licensee is located for judicial review of the decision.

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-3. Opioid treatment programs to obtain license; application; fees and inspections.

1 (a) No person, partnership, association or corporation may operate an opioid treatment
2 program without first obtaining a license from the secretary in accordance with the provisions of
3 this article and the rules lawfully promulgated pursuant to this article.

4 (b) Any person, partnership, association or corporation desiring a license to operate an
5 opioid treatment program in this state shall file with the Office of Health Facility Licensure and
6 Certification an application in such form and with such information as the secretary shall prescribe
7 and furnish accompanied by an application fee.

8 (c) The Director of the Office of Health Facility Licensure and Certification or his or her
9 designee shall inspect each facility and review all documentation submitted with the application.
10 The director shall then provide a recommendation to the secretary whether to approve or deny
11 the application for a license. The secretary shall issue a license if the facility is in compliance with
12 the provisions of this article and with the rules lawfully promulgated pursuant to this article.

13 (d) A license shall be issued in one of three categories:

14 (1) An initial twelve-month license shall be issued to an opioid treatment program
15 establishing a new program or service for which there is insufficient consumer participation to
16 demonstrate substantial compliance with this article and with all rules promulgated pursuant to
17 this article;

18 (2) A provisional license shall be issued when an opioid treatment program seeks a
19 renewal license, or is an existing program as of the effective date of this article and is seeking an
20 initial license, and the opioid treatment program is not in substantial compliance with this article
21 and with all rules promulgated pursuant to this article, but does not pose a significant risk to the
22 rights, health and safety of a consumer. It shall expire not more than six months from the date of
23 issuance, and may not be consecutively reissued; or

24 (3) A renewal license shall be issued when an opioid treatment program is in substantial
25 compliance with this article and with all rules promulgated pursuant to this article. A renewal
26 license shall expire not more than one year from the date of issuance.

27 (e) At least sixty days prior to the license expiration date, an application for renewal shall
28 be submitted by the opioid treatment program to the secretary on forms furnished by the secretary.
29 A license shall be renewed if the secretary determines that the applicant is in compliance with this
30 article and with all rules promulgated pursuant to this article. A license issued to one program
31 location pursuant to this article is not transferrable or assignable. Any change of ownership of a
32 licensed medication-assisted treatment program requires submission of a new application. The
33 medication-assisted treatment program shall notify the secretary of any change in ownership
34 within ten days of the change and must submit a new application within the time frame prescribed
35 by the secretary.

36 (f) Any person, partnership, association or corporation that seeks to obtain or renew a
37 license for an opioid treatment program in this state must submit to the secretary the following
38 documentation:

- 39 (1) Full operating name of the program as advertised;
- 40 (2) Legal name of the program as registered with the West Virginia Secretary of State;
- 41 (3) Physical address of the program;
- 42 (4) Preferred mailing address for the program;
- 43 (5) Email address to be used as the primary contact for the program;
- 44 (6) Federal Employer Identification Number assigned to the program;
- 45 (7) All business licenses issued to the program by this state, the state Tax Department,
46 the Secretary of State and all other applicable business entities;
- 47 (8) Brief description of all services provided by the program;
- 48 (9) Hours of operation;
- 49 (10) Legal Registered Owner Name – name of the person registered as the legal owner
50 of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal
51 owner separately, indicating the percentage of ownership;
- 52 (11) Medical director's full name, medical license number, Drug Enforcement

- 53 Administration registration number, and a list of all current certifications;
- 54 (12) For each employee of the program, provide the following:
- 55 (A) Employee's role and occupation within the program;
- 56 (B) Full legal name;
- 57 (C) Medical license, if applicable;
- 58 (D) Drug Enforcement Administration registration number, if applicable;
- 59 (E) Drug Enforcement Administration identification number to prescribe buprenorphine for
60 addiction, if applicable; and
- 61 (F) Number of hours per week worked at program;
- 62 (13) Name and location address of all programs owned or operated by the applicant;
- 63 (14) Notarized signature of applicant;
- 64 (15) Check or money order for licensing fee and inspection fee;
- 65 (16) Verification of education and training for all physicians, counselors and social workers
66 practicing at or used by referral by the program such as fellowships, additional education,
67 accreditations, board certifications and other certifications; and
- 68 (17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber
69 practicing at the program for the three months preceding the date of application. ~~and~~
- 70 ~~(18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the
71 West Virginia Health Care Authority.~~
- 72 (g) Upon satisfaction that an applicant has met all of the requirements of this article, the
73 secretary shall issue a license to operate an opioid treatment program. An entity that obtains this
74 license may possess, have custody or control of, and dispense drugs indicated and approved by
75 the United States Food and Drug Administration for the treatment of substance use disorders.
- 76 (h) The opioid treatment program shall display the current license in a prominent location
77 where services are provided and in clear view of all patients.
- 78 (i) The secretary or his or her designee shall inspect on a periodic basis all opioid

79 treatment programs that are subject to this article and all rules adopted pursuant to this article to
80 ensure continued compliance.

81 (j) Any license in effect at the time of the passage of this section in the 2016 regular session
82 of the Legislature shall remain in effect until such time as new legislative rules promulgated
83 pursuant to this article become effective. Upon the effective date of the new rules any licensee
84 shall file for a new license within six months pursuant to the licensing procedures and
85 requirements of this section and the new rules promulgated hereunder. The existing license shall
86 remain effective until receipt of the new license.

**§16-5Y-4. Office based medication-assisted treatment programs to obtain registration;
application; fees and inspections.**

1 (a) No person, partnership, association or corporation may operate an office based
2 medication-assisted treatment program without first obtaining a registration from the secretary in
3 accordance with the provisions of this article and the rules lawfully promulgated pursuant to this
4 article.

5 (b) Any person, partnership, association or corporation desiring a registration to operate
6 an office based medication-assisted treatment program in this state shall file with the office of
7 Health Facility Licensure and Certification an application in such form and with such information
8 as the secretary shall prescribe and furnish accompanied by an application fee.

9 (c) The Director of the office of Health Facility Licensure and Certification or his or her
10 designee shall inspect and review all documentation submitted with the application. The director
11 shall then provide a recommendation to the secretary whether to approve or deny the application
12 for registration. The secretary shall issue a registration if the facility is in compliance with the
13 provisions of this article and with the rules lawfully promulgated pursuant to this article.

14 (d) A registration shall be issued in one of three categories:

15 (1) An initial twelve-month registration shall be issued to an office based medication-
16 assisted treatment program establishing a new program or service for which there is insufficient

17 consumer participation to demonstrate substantial compliance with this article and with all rules
18 promulgated pursuant to this article;

19 (2) A provisional registration shall be issued when an office based medication-assisted
20 treatment program seeks a renewal registration, or is an existing program as of the effective date
21 of this article and is seeking an initial registration, and the office based medication-assisted
22 treatment program is not in substantial compliance with this article and with all rules promulgated
23 pursuant to this article, but does not pose a significant risk to the rights, health and safety of a
24 consumer. It shall expire not more than six months from the date of issuance, and may not be
25 consecutively reissued; or

26 (3) A renewal registration shall be issued when an office based medication-assisted
27 treatment program is in substantial compliance with this article and with all rules promulgated
28 pursuant to this article. A renewal registration shall expire not more than one year from the date
29 of issuance.

30 (e) At least sixty days prior to the registration expiration date, an application for renewal
31 shall be submitted by the office based medication-assisted treatment program to the secretary on
32 forms furnished by the secretary. A registration shall be renewed if the secretary determines that
33 the applicant is in compliance with this article and with all rules promulgated pursuant to this
34 article. A registration issued to one program location pursuant to this article is not transferrable
35 or assignable. Any change of ownership of a registered medication-assisted treatment program
36 requires submission of a new application. The medication-assisted treatment program shall notify
37 the secretary of any change in ownership within ten days of the change and must submit a new
38 application within the time frame prescribed by the secretary.

39 (f) Any person, partnership, association or corporation seeking to obtain or renew a
40 registration for an office based medication-assisted treatment program in this state must submit
41 to the secretary the following documentation:

42 (1) Full operating name of the program as advertised;

- 43 (2) Legal name of the program as registered with the West Virginia Secretary of State;
- 44 (3) Physical address of the program;
- 45 (4) Preferred mailing address for the program;
- 46 (5) Email address to be used as the primary contact for the program;
- 47 (6) Federal Employer Identification Number assigned to the program;
- 48 (7) All business licenses issued to the program by this state, the state Tax Department,
- 49 the Secretary of State and all other applicable business entities;
- 50 (8) Brief description of all services provided by the program;
- 51 (9) Hours of operation;
- 52 (10) Legal Registered Owner Name – name of the person registered as the legal owner
- 53 of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal
- 54 owner separately, indicating the percentage of ownership;
- 55 (11) Medical director's full name, medical license number, Drug Enforcement
- 56 Administration registration number, and a listing of all current certifications;
- 57 (12) For each physician, counselor or social worker of the program, provide the following:
- 58 (A) Employee's role and occupation within the program;
- 59 (B) Full legal name;
- 60 (C) Medical license, if applicable;
- 61 (D) Drug Enforcement Administration registration number, if applicable;
- 62 (E) Drug Enforcement Administration identification number to prescribe buprenorphine for
- 63 addiction, if applicable; and
- 64 (F) Number of hours worked at program per week;
- 65 (13) Name and location address of all programs owned or operated by the applicant;
- 66 (14) Notarized signature of applicant;
- 67 (15) Check or money order for registration fee;
- 68 (16) Verification of education and training for all physicians, counselors and social workers

69 practicing at or used by referral by the program such as fellowships, additional education,
 70 accreditations, board certifications and other certifications; and

71 (17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber
 72 practicing at the program for the three months preceding the date of application. ~~and~~

73 ~~(18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the~~
 74 ~~West Virginia Health Care Authority.~~

75 (g) Upon satisfaction that an applicant has met all of the requirements of this article, the
 76 secretary shall issue a registration to operate an office based medication-assisted treatment
 77 program. An entity that obtains this registration may possess, have custody or control of, and
 78 dispense drugs indicated and approved by the United States Food and Drug Administration for
 79 the treatment of substance use disorders.

80 (h) The office based medication-assisted treatment program shall display the current
 81 registration in a prominent location where services are provided and in clear view of all patients.

82 (i) The secretary or his or her designee shall perform complaint and verification
 83 inspections on all office based medication-assisted treatment programs that are subject to this
 84 article and all rules adopted pursuant to this article to ensure continued compliance.

85 (j) Any person, partnership, association or corporation operating a medication-assisted
 86 treatment program shall be permitted to continue operation until the effective date of the new rules
 87 promulgated pursuant to this article. At that time a person, partnership, association or corporation
 88 shall file for registration within six months pursuant to the licensing procedures and requirements
 89 of this section and the new rules promulgated hereunder. The existing procedures of the person,
 90 partnership, association or corporation shall remain effective until receipt of the registration.

ARTICLE 29B. HEALTH CARE AUTHORITY.

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

1 The Legislature hereby finds that the health and welfare of the citizens of this state is being
 2 threatened by unreasonable increases in the cost of health care services, a fragmented system

3 of health care, lack of integration and coordination of health care services, unequal access to
4 primary and preventative care, lack of a comprehensive and coordinated health information
5 system to gather and disseminate data to promote the availability of cost-effective, high-quality
6 services and to permit effective health planning and analysis of utilization, clinical outcomes and
7 cost and risk factors. In order to alleviate these threats: (1) Information on health care costs must
8 be gathered; and (2) an entity of state government must be given authority to ensure the
9 containment of health care costs, to gather and disseminate health care information; to analyze
10 and report on changes in the health care delivery system as a result of evolving market forces,
11 and to assure that the state health plan ~~certificate-of-need program~~ and information systems serve
12 to promote cost containment, access to care, quality of services and prevention. Therefore, the
13 purpose of this article is to protect the health and well-being of the citizens of this state by guarding
14 against unreasonable loss of economic resources as well as to ensure the continuation of
15 appropriate access to cost-effective, high-quality health care services.

§16-29B-3. Definitions.

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

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

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

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

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

13 (d) "Health care provider" means a person, partnership, corporation, facility, hospital or
14 institution licensed, certified or authorized by law to provide professional health care service in
15 this state to an individual during this individual's medical, remedial, or behavioral health care,
16 treatment or confinement. For purposes of this article, "health care provider" shall not include the
17 private office practice of one or more health care professionals licensed to practice in this state
18 pursuant to the provisions of chapter thirty of this code.

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

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

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

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

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

37 (j) "State health plan" means a document prepared by the authority that sets forth a
38 strategy for future health service needs in the state.

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

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

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

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

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

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

11 (3) Apply for, receive and accept gifts, payments and other funds and advances from the
12 United States, the state or any other governmental body, agency or agencies or from any other
13 private or public corporation or person (with the exception of hospitals subject to the provisions of
14 this article, or associations representing them, doing business in the State of West Virginia, except
15 in accordance with subsection (c) of this section), and enter into agreements with respect thereto,
16 including the undertaking of studies, plans, demonstrations or projects. Any such gifts or
17 payments that may be received or any such agreements that may be entered into shall be used

18 or formulated only so as to pursue legitimate, lawful purposes of the board, and shall in no respect
19 inure to the private benefit of a board member, staff member, donor or contracting party;

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

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

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

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

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

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

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

§16-29B-11. Related programs.

1 (a) In addition to carrying out its duties under this article, the board shall carry out its
 2 information disclosure functions has the following powers and duties:

3 (1) The board may issue grants and loans to financially vulnerable health care facilities
 4 located in underserved areas that the authority and the office of Community and Rural Health
 5 Services determine are collaborating with other providers in the service area to provide cost
 6 effective health services.

7 (2) The board shall review the state health plan and make any amendments and
 8 modifications to each that it may deem necessary, no later than September 1, 2017, and biennially
 9 thereafter.

10 (3) The board may create a standing advisory committee to advise and assist in amending
 11 the state health plan and performing the state agencies' responsibilities.

12 (4) The board shall perform its information disclosure functions set forth in article five-f of
 13 this chapter. and its functions set forth in article two-d of this chapter, including health planning,
 14 issuing grants and loans to financially vulnerable health care entities located in underserved
 15 areas, and the review and approval or disapproval of capital expenditures for health care facilities
 16 or services. In making decisions in the certificate of need review process, the board shall be
 17 guided by the state health plan approved by the Governor

18 (b) The authority is authorized to propose rules for legislative approval in accordance with
 19 the provisions of article three, chapter twenty-nine-a of this code, to implement the powers and
 20 duties described in this section.

§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 as set out in this article. The authority has
38 the power to review, approve or deny cooperative agreements, ascertain that they are beneficial
39 to citizens of the state and to medical education, to ensure compliance with the provisions of the
40 cooperative agreements relative to the commitments made by the qualified hospital and
41 conditions imposed by the Health Care Authority.

42 (d) *Cooperative Agreements.* —

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

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

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

50 (2) The goal of any cooperative agreement would be to:

51 (A) Improve access to care;

52 (B) Advance health status;

53 (C) Target regional health issues;

- 54 (D) Promote technological advancement;
- 55 (E) Ensure accountability of the cost of care;
- 56 (F) Enhance academic engagement in regional health;
- 57 (G) Preserve and improve medical education opportunities;
- 58 (H) Strengthen the workforce for health-related careers; and
- 59 (I) Improve health entity collaboration and regional integration, where appropriate.

60 (3) A qualified hospital located in this state may submit an application for approval of a
61 proposed cooperative agreement to the authority. The application shall state in detail the nature
62 of the proposed arrangement including the goals and methods for achieving:

- 63 (A) Population health improvement;
- 64 (B) Improved access to health care services;
- 65 (C) Improved quality;
- 66 (D) Cost efficiencies;
- 67 (E) Ensuring affordability of care;
- 68 (F) Enhancing and preserving medical education programs; and
- 69 (G) Supporting the authority's goals and strategic mission, as applicable.

70 (4) ~~(A) If the cooperative agreement involves a combination of hospitals through merger,~~
71 ~~consolidation or acquisition, the qualified hospital must have been awarded a certificate of need~~
72 ~~for the project by the authority, as set forth in article two-d of this chapter prior to submitting an~~
73 ~~application for review of a cooperative agreement~~

74 ~~(B) In addition to a certificate of need~~ The authority may also require that an application
75 for review of a cooperative agreement as provided in this section be submitted and approved prior
76 to the finalization of the cooperative agreement, if the cooperative agreement involves the merger,
77 consolidation or acquisition of a hospital located within a distance of twenty highway miles of the
78 main campus of the qualified hospital, and the authority shall have determined that combination
79 is likely to produce anti-competitive effects due to a reduction of competition. Any such

80 determination shall be communicated to the parties to the cooperative agreement within seven
81 days from approval of a certificate of need for the project.

82 (C) In reviewing an application for cooperative agreement, the authority shall give
83 deference to the policy statements of the Federal Trade Commission.

84 (D) If an application for a review of a cooperative agreement is not required by the
85 authority, the parties to the agreement may ~~then complete the transaction following a final order~~
86 ~~by the authority on the certificate of need as set forth in article two-d of this code. The qualified~~
87 ~~hospital may~~ apply to the authority for approval of the cooperative agreement either before or
88 after the finalization of the cooperative agreement.

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

92 ~~(F) The complete record in the certificate of need proceeding shall be part of the record~~
93 ~~in the proceedings under this section and information submitted by an applicant in the certificate~~
94 ~~of need proceeding need not be duplicated in proceedings under this section~~

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

96 (1) Upon receipt of an application, the authority shall determine whether the application is
97 complete. If the authority determines the application is incomplete, it shall notify the applicant in
98 writing of additional items required to complete the application. A copy of the complete application
99 shall be provided by the parties to the office of the Attorney General simultaneous with the
100 submission to the authority. If an applicant believes the materials submitted contain proprietary
101 information that is required to remain confidential, such information must be clearly identified and
102 the applicant shall submit duplicate applications, one with full information for the authority's use
103 and one redacted application available for release to the public.

104 (2) The authority shall upon receipt of a completed application, publish notification of the
105 application on its website as well as provide notice of such application placed in the State

106 Register. The public may submit written comments regarding the application within ten days
107 following publication. Following the close of the written comment period, the authority shall review
108 the application as set forth in this section. Within thirty days of the receipt of a complete
109 application the authority may:

110 (i) Issue a certificate of approval which shall contain any conditions the authority finds
111 necessary for the approval;

112 (ii) Deny the application; or

113 (iii) Order a public hearing if the authority finds it necessary to make an informed decision
114 on the application.

115 (3) The authority shall issue a written decision within seventy-five days from receipt of the
116 completed application. The authority may request additional information in which case they shall
117 have an additional fifteen days following receipt of the supplemental information to approve or
118 deny the proposed cooperative agreement.

119 (4) Notice of any hearing shall be sent by certified mail to the applicants and all persons,
120 groups or organizations who have submitted written comments on the proposed cooperative
121 agreement. ~~as well as to all persons, groups or organizations designated as affected parties in~~
122 ~~the certificate of need proceeding~~ Any individual, group or organization who submitted written
123 comments regarding the application and wishes to present evidence at the public hearing shall
124 request to be recognized as an affected party as set forth in article two-d of this chapter. The
125 hearing shall be held no later than forty-five days after receipt of the application. The authority
126 shall publish notice of the hearing on the authority's website fifteen days prior to the hearing. The
127 authority shall additionally provide timely notice of such hearing in the State Register.

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

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

130 (1) In its review of an application for approval of a cooperative agreement submitted
131 pursuant to this section, the authority may consider the proposed cooperative agreement and any

132 supporting documents submitted by the applicant, any written comments submitted by any person
133 and any written or oral comments submitted, or evidence presented, at any public hearing.

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

136 (3) The authority shall approve a proposed cooperative agreement and issue a certificate
137 of approval if it determines, with the written concurrence of the Attorney General, that the benefits
138 likely to result from the proposed cooperative agreement outweigh the disadvantages likely to
139 result from a reduction in competition from the proposed cooperative agreement.

140 (4) In evaluating the potential benefits of a proposed cooperative agreement, the authority
141 shall consider whether one or more of the following benefits may result from the proposed
142 cooperative agreement:

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

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

147 (C) Enhancement of population health status consistent with the health goals established
148 by the authority;

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

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

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

153 (G) Avoidance of duplication of hospital resources;

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

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

156 (5) The authority's evaluation of any disadvantages attributable to any reduction in
157 competition likely to result from the proposed cooperative agreement shall include, but need not

158 be limited to, the following factors:

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

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

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

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

173 (6) (A) After a complete review of the record, including, but not limited to, the factors set
174 out in subsection (e) of this section, any commitments made by the applicant or applicants and
175 any conditions imposed by the authority, if the authority determines that the benefits likely to result
176 from the proposed cooperative agreement outweigh the disadvantages likely to result from a
177 reduction in competition from the proposed cooperative agreement, the authority shall approve
178 the proposed cooperative agreement.

179 (B) The authority may reasonably condition approval upon the parties' commitments to:

180 (i) Achieving improvements in population health;

181 (ii) Access to health care services;

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

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

185 Any conditions set by the authority shall be fully enforceable by the authority. No condition
186 imposed by the authority, however, shall limit or interfere with the right of a hospital to adhere to
187 religious or ethical directives established by its governing board.

188 (7) The authority's decision to approve or deny an application shall constitute a final order
189 or decision pursuant to the West Virginia Administrative Procedure Act (§29A-1-1, *et seq.*). The
190 authority may enforce commitments and conditions imposed by the authority in the circuit court
191 of Kanawha County or the circuit court where the principal place of business of a party to the
192 cooperative agreement is located.

193 (g) *Enforcement and supervision of cooperative agreements.* — The authority shall
194 enforce and supervise any approved cooperative agreement for compliance.

195 (1) The authority is authorized to promulgate legislative rules in furtherance of this section.
196 Additionally, the authority shall promulgate emergency rules pursuant to the provisions of section
197 fifteen, article three, chapter twenty-nine-a of this code to accomplish the goals of this section.
198 These rules shall include, at a minimum:

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

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

203 (ii) A description of the activities conducted pursuant to the cooperative agreement,
204 including any actions taken in furtherance of commitments made by the parties or terms imposed
205 by the authority as a condition for approval of the cooperative agreement;

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

208 (iv) Disclosure of any reimbursement contract between a party to a cooperative agreement
209 approved pursuant to this section and a commercial health plan or insurer entered into

210 subsequent to the finalization of the cooperative agreement. This shall include the amount, if any,
211 by which an increase in the average rate of reimbursement exceeds, with respect to inpatient
212 services for such year, the increase in the Consumer Price Index for all Urban Consumers for
213 hospital inpatient services as published by the Bureau of Labor Statistics for such year and, with
214 respect to outpatient services, the increase in the Consumer Price Index for all Urban Consumers
215 for hospital outpatient services for such year; and

216 (v) Any additional information required by the authority to ensure compliance with the
217 cooperative agreement.

218 (B) If an approved application involves the combination of hospitals, disclosure of the
219 performance of each hospital with respect to a representative sample of quality metrics selected
220 annually by the authority from the most recent quality metrics published by the Centers for
221 Medicare and Medicaid Services. The representative sample shall be published by the authority
222 on its website.

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

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

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

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

242 (E) The ability of the authority to investigate, as needed, to ensure compliance with the
243 cooperative agreement.

244 (F) The ability of the authority to take appropriate action, including revocation of a
245 certificate of approval, if it determines that:

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

248 (ii) The authority's approval was obtained as a result of an intentional material
249 misrepresentation;

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

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

253 (G) If the authority determines the parties to an approved cooperative agreement have
254 engaged in conduct that is contrary to state policy or the public interest, including the failure to
255 take action required by state policy or the public interest, the authority may initiate a proceeding
256 to determine whether to require the parties to refrain from taking such action or requiring the
257 parties to take such action, regardless of whether or not the benefits of the cooperative agreement
258 continue to outweigh its disadvantages. Any determination by the authority shall be final. The
259 authority is specifically authorized to enforce its determination in the circuit court of Kanawha
260 County or the circuit court where the principal place of business of a party to the cooperative
261 agreement is located.

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

263 (2) Until the promulgation of the emergency rules, the authority shall monitor and regulate
264 cooperative agreements to ensure that their conduct is in the public interest and shall have the
265 powers set forth in subdivision (1) of this subsection, including the power of enforcement set forth
266 in paragraph (G), subdivision (1) of this subsection.

267 (h) *Fees.* — The authority may set fees for the approval of a cooperative agreement.
268 These fees shall be for all reasonable and actual costs incurred by the authority in its review and
269 approval of any cooperative agreement pursuant to this section. These fees shall not exceed
270 \$75,000. Additionally, the authority may assess an annual fee not to exceed \$75,000 for the
271 supervision of any cooperative agreement approved pursuant to this section and to support the
272 implementation and administration of the provisions of this section.

273 (i) *Miscellaneous provisions.* —

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

280 (B) At least ninety days prior to the implementation of any increase in rates for inpatient
281 and outpatient hospital services and at least sixty days prior to the execution of any
282 reimbursement agreement with a third party payor, a hospital party to a cooperative agreement
283 involving the combination of two or more hospitals through merger, consolidation or acquisition
284 which has been approved by the authority shall submit any proposed increase in rates for inpatient
285 and outpatient hospital services and any such reimbursement agreement to the Office of the West
286 Virginia Attorney General together with such information concerning costs, patient volume, acuity,
287 payor mix and other data as the Attorney General may request. Should the Attorney General

288 determine that the proposed rates may inappropriately exceed competitive rates for comparable
289 services in the hospital's market area which would result in unwarranted consumer harm or impair
290 consumer access to health care, the Attorney General may request the authority to evaluate the
291 proposed rate increase and to provide its recommendations to the Office of the Attorney General.
292 The Attorney General may approve, reject or modify the proposed rate increase and shall
293 communicate his or her decision to the hospital no later than thirty days prior to the proposed
294 implementation date. The hospital may then only implement the increase approved by the
295 Attorney General. Should the Attorney General determine that a reimbursement agreement with
296 a third party payor includes pricing terms at anti-competitive levels, the Attorney General may
297 reject the reimbursement agreement and communicate such rejection to the parties thereto
298 together with the rationale therefor in a timely manner.

299 (2) The authority shall maintain on file all cooperative agreements the authority has
300 approved, including any conditions imposed by the authority.

301 (3) Any party to a cooperative agreement that terminates its participation in such
302 cooperative agreement shall file a notice of termination with the authority thirty days after
303 termination.

304 (4) No hospital which is a party to a cooperative agreement for which approval is required
305 pursuant to this section may knowingly bill or charge for health services resulting from, or
306 associated with, such cooperative agreement until approved by the authority. Additionally, no
307 hospital which is a party to a cooperative agreement may knowingly bill or charge for health
308 services resulting from, or associated with, such cooperative agreement for which approval has
309 been revoked or terminated.

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

CHAPTER33. INSURANCE.

ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.

§33-15B-5. Penalties for violation.

1 Any person, partnership, corporation, limited liability company, professional corporation,
2 health care provider, insurer or other payer, or other entity violating any provision of this article
3 shall be subject to a fine imposed by the commissioner of not more than \$1000 for each violation.
4 ~~and, in addition to or in lieu of any fine imposed, the West Virginia Health Care AuthorityHealth~~
5 ~~Care Authority is empowered to withhold rate approval or a certificate of need for any health care~~
6 ~~provider violating any provision of this article~~

NOTE: The purpose of this bill is to terminate the certificate of need program for healthcare facilities and delete references to the certificate of need program throughout the code.

§16-2D-1 has been completely rewritten; therefore, it has been completely underscored..

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