

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4014

FISCAL
NOTE

BY DELEGATES SUMMERS, ROMINE, R., ELLINGTON,
ROHRBACH, MAYNARD, HOUSEHOLDER, MILLER, C.,
COOPER, DEAN AND AMBLER

[Introduced January 18, 2018; Referred
to the Committee on Health and Human Resources then
Finance.]

1 A BILL to repeal §16-1-5 of the Code of West Virginia, 1931, as amended; to repeal §16-2G-1 of
2 said code; to repeal §16-4A-1, §16-4A-2, §16-4A-3, §16-4A-4, §16-4A-5 and §16-4A-6 of
3 said code; to repeal §16-4E-1, §16-4E-2, §16-4E-3, §16-4E-4, §16-4E-5 and §16-4E-6 of
4 said code; to repeal §16-22-1, §16-22-2, §16-22-3, §16-22-4, §16-22-5 and §16-22-6 of
5 said code; to repeal §16-22A-1, §16-22A-2, §16-22A-3 and §16-22A-4 of said code; to
6 repeal §16-22B-1, §16-22B-2, §16-22B-3 and §16-22B-4 of said code; to repeal §16-24-
7 8 of said code; to repeal §16-37-1, §16-37-2, §16-37-3, §16-37-4 and §16-37-5 of said
8 code; to repeal §16-38-1, §16-38-2, §16-38-3, §16-38-4, §16-38-5, §16-38-6 and §16-38-
9 7 of said code; to repeal §16-44-1 and §16-44-2 of said code; to repeal §16-45-1, §16-45-
10 2, §16-45-3, §16-45-4 and §16-45-5 of said code; to amend and reenact §5-6-4 of said
11 code; to amend and reenact §5-14-3 of said code; to amend and reenact §5F-1-2 and
12 §5F-1-3a of said code; to amend and reenact §5F-2-1, §5F-2-2 and §5F-2-7 of said code;
13 to amend and reenact §5F-3-1 and §5F-3-2 of said code; to amend and reenact §6-7-2a
14 of said code; to amend and reenact §8-19-18 of said code; to amend and reenact chapter
15 9 of said code; to amend and reenact §15-12-2a and §15-12-2b of said code; to amend
16 and reenact §16-1-2, §16-1-3 and §16-1-6 of said code; to amend said code by adding
17 thereto six new sections designated §16-1-3a, §16-1-5a, §16-1-5b, §16-1-6a, §16-1-6b
18 and §16-1-6c; to amend and reenact §16-2-2 and §16-2-9 of said code; to amend and
19 reenact §16-3-4 of said code; to amend and reenact §16-3D-2 of said code; to amend and
20 reenact §16-8-1 and §16-8-2 of said code; to amend said code by adding thereto four new
21 sections designated §16-8-3, §16-8-4, §16-8-5 and §16-8-6; to amend and reenact §16-
22 29E-2, §16-29E-3, §16-29E-5 of said code; to amend and reenact §17C-5-6a of said code;
23 to amend and reenact §17C-5A-3 of said code; to amend and reenact §18-4-2 of said
24 code; to amend and reenact §18-5-22c of said code; to amend and reenact §18-7A-3 of
25 said code; to amend and reenact §18-9E-3 and §18-9E-5, of said code; to amend and
26 reenact §18-10K-2 of said code; to amend and reenact §18C-3-1 of said code; to amend

27 and reenact §19-11D-1 and §19-11D-3 of said code; to amend and reenact §19-12A-6 of
28 said code; to amend and reenact §19-16A-4 of said code; to amend and reenact §20-2-
29 28 of said code; to amend and reenact §22-15-10 of said code; to amend and reenact
30 §22-28-4 and §22-28-5 of said code; to amend and reenact §22C-4-10 of said code; to
31 amend and reenact §25-1-3 of said code; to amend and reenact chapter 27 of said code;
32 to amend and reenact §30-3-4, §30-3-5 and §30-3-8 of said code; to amend and reenact
33 §30-16-19 of said code; to amend and reenact §31-15A-2 and §31-15A-3 of said code; to
34 amend and reenact §48-1-236 of said code; to amend and reenact §48-14-401 of said
35 code; to amend and reenact §48-18-101, §48-18-108 and §48-18-126 of said code; to
36 amend and reenact §48-19-103 of said code; to amend and reenact §48-22-104 of said
37 code; to amend and reenact §48-23-301 of said code; to amend and reenact §48-26-501,
38 §48-26-502 and §48-26-503 of said code; to amend and reenact §49-1-206 and §49-1-
39 208 of said code; to amend and reenact §49-2-901, §49-2-902, §49-2-903, §49-2-905,
40 §49-2-906 and §49-2-913 of said code; to amend and reenact §49-7-204 of said code; to
41 amend and reenact §61-12-3, §61-12-4 and §61-12-6 of said code; and to amend and
42 reenact §62-13-5 of said code, all relating to reorganization of the West Virginia
43 Department of Health and Human Resources; creating the Departments of Health and
44 Compliance, Human Services and Healthcare Facilities; creating the Office of Inspector
45 General; setting out powers and duties of cabinet secretaries and Inspector General;
46 setting out powers and duties of newly created departments and Office of Inspector
47 General; transferring various functions, personal and authority from existing department
48 to the newly created departments; creating various bureaus within the newly created
49 departments; setting forth powers and duties of commissioners of bureaus; setting forth
50 powers and duties of the bureaus; transferring and restructuring various existing
51 functionality among bureaus; revising, rearranging and recodifying the laws of the State
52 of West Virginia relating to health care, human services and behavioral health; providing

53 for various transition plans; requiring restructuring to remain as revenue neutral as
 54 possible; transferring the Division of Juvenile Services from the Department of Military
 55 Affairs and Public Safety to the newly created Department of Human Services; placing
 56 autonomous healthcare licensing boards within the newly created Department of Health
 57 and Compliance for administrative purposes; defining terms; making various technical
 58 corrections and removing outdated language.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 6. STATE BUILDINGS.

§5-6-4. Powers of commission.

1 The commission has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name of the commission or of the state,
 5 by purchase, lease, lease-purchase or otherwise, real property or rights or easements necessary
 6 or convenient for its corporate purposes and to exercise the power of eminent domain to
 7 accomplish those purposes;

8 (4) To acquire, hold and dispose of personal property for its corporate purposes;

9 (5) To make bylaws for the management and regulation of its affairs;

10 (6) With the consent of the Attorney General of the State of West Virginia, to use the
 11 facilities of his or her office, assistants and employees in all legal matters relating to or pertaining

12 to the commission;

13 (7) To appoint officers, agents and employees and fix their compensation;

14 (8) To make contracts, and to execute all instruments necessary or convenient to
15 effectuate the intent of, and to exercise the powers granted to it by this article;

16 (9) To renegotiate all contracts entered into by it whenever, due to a change in situation,
17 it appears to the commission that its interests will be best served;

18 (10) To construct a building or buildings on real property, which it may acquire, or which
19 may be owned by the State of West Virginia, in the city of Charleston, as convenient as may be
20 to the capitol building, together with incidental approaches, structures and facilities, subject to the
21 consent and approval of the city of Charleston in any case as may be necessary; and, in addition,
22 to acquire or construct a warehouse, including office space in the warehouse in Kanawha County
23 for the West Virginia Alcohol Beverage Control Commissioner, and equip and furnish the office
24 space; and to acquire or construct, through lease, purchase, lease-purchase or bond financing,
25 hospitals or other facilities, buildings, or additions or renovations to buildings as may be necessary
26 for the safety and care of patients, inmates and guests at facilities under the jurisdiction of and
27 supervision of the ~~division of health~~ Department of Health and Compliance, the Department of
28 Human Services and at institutions under the jurisdiction of the Division of Corrections or the
29 regional jail and correctional facilities authority; and to formulate and program plans for the orderly
30 and timely capital improvement of all of the hospitals and institutions and the state Capitol
31 buildings; and to construct a building or buildings in Kanawha County to be used as a general
32 headquarters by the division of public safety to accommodate that division's executive staff,
33 clerical offices, technical services, supply facilities and dormitory accommodations; and to
34 develop, improve and expand state parks and recreational facilities to be operated by the Division
35 of Natural Resources; and to establish one or more systems or complexes of buildings and
36 projects under control of the commission; and, subject to prior agreements with holders of bonds
37 previously issued, to change the systems, complexes of buildings and projects from time to time,

38 in order to facilitate the issuance and sale of bonds of different series on a parity with each other
39 or having such priorities between series as the commission may determine; and to acquire by
40 purchase, eminent domain or otherwise all real property or interests in the real property necessary
41 or convenient to accomplish the purposes of this subdivision. The rights and powers set forth in
42 this subdivision shall not be construed as in derogation of any rights and powers now vested in
43 the West Virginia Alcohol Beverage Control Commissioner, the Department of Health and
44 Compliance and the Department of Human Resources Services, the Division of Corrections or
45 the Division of Natural Resources;

46 (11) To maintain, construct and operate a project authorized under this article;

47 (12) To charge rentals for the use of all or any part of a project or buildings at any time
48 financed, constructed, acquired or improved, in whole or in part, with the proceeds of sale of
49 bonds issued pursuant to this article, subject to and in accordance with such agreements with
50 bondholders as may be made as provided in this article: *Provided*, That on and after the effective
51 date of the amendments to this section, to charge rentals for the use of all or any part of a project
52 or buildings at any time financed, constructed, acquired, maintained or improved, in whole or in
53 part, with the proceeds of sale of bonds issued pursuant to this article, subject to and in
54 accordance with such agreements with bondholders as may be made as in this section provided,
55 or with any funds available to the state building commission, including, but not limited to, all
56 buildings and property owned by the State of West Virginia or by the state building commission,
57 but no rentals shall be charged to the Governor, Attorney General, Secretary of State, State
58 Auditor, State Treasurer, the Legislature and the members of the Legislature, the Supreme Court
59 of Appeals, nor for their offices, agencies, official functions and duties;

60 (13) To issue negotiable bonds and to provide for the rights of the holders of the negotiable
61 bonds;

62 (14) To accept and expend any gift, grant or contribution of money to, or for the benefit of,
63 the commission, from the State of West Virginia or any other source for any or all of the purposes

64 specified in this article or for any one or more of such purposes as may be specified in connection
65 with the gift, grant or contribution;

66 (15) To enter on any lands and premises for the purpose of making surveys, soundings
67 and examinations;

68 (16) To invest in United States government obligations, on a short-term basis, any surplus
69 funds which the commission may have on hand pending the completion of any project or projects;

70 (17) To issue revenue bonds in accordance with the applicable provisions of this article
71 for the purposes set forth in §5-6-11a of this code; and

72 (18) To do all things necessary or convenient to carry out the powers given in this article.

73 (19) The power and authority granted to the state building commission pursuant to this
74 section and §5-6-7, §5-6-8, and §5-6-11a of this code to initiate, acquire, construct, finance or
75 develop projects; to issue revenue bonds; or to exercise the power of eminent domain with respect
76 to any project, shall terminate on the effective date of this section: *Provided*, That nothing herein
77 shall be construed to affect the validity of any act of the state building commission prior to the
78 effective date of this section or to impair the rights of bondholders with respect to bonds or other
79 evidence of indebtedness issued prior to the effective date of this section. Following the effective
80 date of this section, the secretary of administration may exercise any power expressly granted
81 pursuant to this article with respect to any project or facility previously constructed or acquired,
82 any existing contractual obligations, and any outstanding bonded indebtedness. Refunding bonds
83 for any outstanding bonded indebtedness are authorized, subject to the provisions of §13-2E-1 *et*
84 *seq.* of this code. The West Virginia Economic Development Authority provided for in §31-15-1 *et*
85 *seq.* of this code is designated to act as the governing body whose authorizations and
86 determinations are required for the purpose of refunding bonds.

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-
HEARING.**

§5-14-3. Continuation of commission; membership.

1 (a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within
2 the Department of ~~Health and Human Resources~~ Human Services consisting of seventeen
3 persons, eight of whom shall serve ex officio. The remaining members are appointed by the
4 Governor by and with the advice and consent of the Senate. The commission shall meet no less
5 than four times annually. All meetings and activities held by the commission shall be attended by
6 at least two qualified interpreters who shall be hired at the commission's expense or provided free
7 of charge by agencies, organizations or individuals willing to volunteer qualified interpreters.

8 (b) The members are: The Secretary of the Department of ~~Health and Human Resources~~
9 Human Services, or his or her designee; the Commissioner of the Division of Labor, or his or her
10 designee; the Commissioner of the Bureau for Public Health, or his or her designee; the state
11 Superintendent of Schools, or his or her designee; the Director of the Division of Rehabilitation
12 Services, or his or her designee; the ~~Commissioner of the Division of Human Services~~ Secretary
13 of the Department of Health and Compliance, or his or her designee; the Chairman of the Advisory
14 Council for the Education of Exceptional Children, or his or her designee; and the superintendent
15 of the West Virginia School for the Deaf and Blind, or his or her designee, all of whom serve ex
16 officio with full voting privileges.

17 (c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of
18 hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the
19 hearing-impaired, one audiologist and one otolaryngologist. Of the five deaf people, at least three
20 shall be selected from a list of five people recommended by the board of the West Virginia
21 Association of the Deaf.

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

ARTICLE 1. GENERAL PROVISIONS.

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

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

3 (1) Department of Administration;

4 (2) Department of Education and the Arts;

5 (3) Department of Environmental Protection;

6 (4) Effective July 1, 2019, Department of Health and Human Resources Compliance;

7 (5) Effective July 1, 2019, Department of Human Services;

8 (6) Effective July 1, 2019, Department of Healthcare Facilities;;

9 ~~(5)~~ (7) Department of Military Affairs and Public Safety;

10 ~~(6)~~ (8) Department of Revenue;

11 ~~(7)~~ (9) Department of Transportation;

12 ~~(8)~~ (10) Department of Commerce; and

13 ~~(9) Effective July 1, 2014~~ (11) Department of Veterans' Assistance.

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

16 (c) Effective July 1, 2019, unless the context indicates otherwise, any reference in this
17 code to the Secretary of the Department of Health and Human Resources shall be and refer to
18 the secretary of the department which has control over the functions referenced in any section,
19 article of chapter of this code which had previously been granted to the Secretary of the
20 Department of Health and Human Resources.

21 (d) Effective July 1, 2019, unless the context indicates otherwise any reference to any
22 powers, duties, functions or responsibility set forth in this code of the Secretary of the Department
23 of Health and Human Resources shall transfer and become the powers, duties, functions and
24 responsibility of the secretary which has either expressly been granted that power, duty, function
25 or responsibility in chapters 9 or 16 of this code or by the intent of any section, article or chapter

26 of this code that power, duty, function or responsibility would logically be within one of the
27 departments created in chapter 9 of this code and over which the appropriate secretary has
28 control.

§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;~~ Executive Director,
15 WorkForce West Virginia; commissioner, Bureau of Senior Services; director of tourism;
16 commissioner, division of tax; ~~administrator, division of health;~~ commissioner, Division of
17 Corrections; director, Division of Natural Resources; superintendent, state police; administrator,
18 lottery division; director, Public Employees Insurance Agency; administrator, Alcohol Beverage
19 Control Commission; commissioner, Division of Motor Vehicles; director, Division of Personnel;
20 Adjutant General; the Executive Director of the Health Care Authority; director, Division of
21 Rehabilitation Services; executive director, educational broadcasting authority; executive
22 secretary, Library Commission; chairman and members of the Public Service Commission;

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

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

- 4 (1) Building Commission provided in §5-6-1 *et seq.* of this code;
- 5 (2) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;
- 6 (3) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;
- 7 (4) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;
- 8 (5) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this
 9 code;

10 (6) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

11 (7) Boundary Commission provided in §29-23-1 *et seq.* of this code;

12 (8) Public Defender Services provided in §29-21-1 *et seq.* of this code;

13 (9) Division of Personnel provided in §29-6-1 *et seq.* of this code;

14 (10) The West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

15 (11) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

16 (12) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

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

20 (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

21 (A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of
22 this code; and

23 (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.*
24 of this code.

25 (2) Office of Miners' Health, Safety and Training provided in §22A-1-1 *et seq.* of this code.

26 The following boards are transferred to the Office of Miners' Health, Safety and Training for
27 purposes of administrative support and liaison with the Office of the Governor:

28 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
29 Committee provided in §22A-6-1 *et seq.* of this code;

30 (B) Board of Miner Training, Education and Certification provided in §22A-7-1 *et seq.* of
31 this code; and

32 (C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

33 (3) The West Virginia Development Office provided in §5B-2-1 *et seq.* of this code;

34 (4) Division of Natural Resources and Natural Resources Commission provided in §20-1-
35 1 *et seq.* of this code;

- 36 (5) Division of Forestry provided in §19-1A-1 *et seq.* of this code;
- 37 (6) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code; and
- 38 (7) Workforce West Virginia provided in chapter 21A of this code, which includes:
- 39 (A) Division of Unemployment Compensation;
- 40 (B) Division of Employment Service;
- 41 (C) Division of Workforce Development; and
- 42 (D) Division of Research, Information and Analysis.
- 43 (8) Division of Energy provided in §5B-2F-1 *et seq.* of this code.
- 44 (9) Division of Tourism Commission provided in §5B-2H-1 *et seq.* of this code.
- 45 (c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is
- 46 continued as an independent agency within the executive branch.
- 47 (d) The Water Development Authority and the Water Development Authority Board
- 48 provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the
- 49 executive branch.
- 50 (e) The following agencies and boards, including all of the allied, advisory and affiliated
- 51 entities, are transferred to the Department of Environmental Protection for purposes of
- 52 administrative support and liaison with the office of the Governor:
- 53 (1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;
- 54 (2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;
- 55 (3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of
- 56 this code;
- 57 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;
- 58 (5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;
- 59 (6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and
- 60 (7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.
- 61 (f) The following agencies and boards, including all of the allied, advisory, affiliated or

62 related entities and funds associated with any agency or board, are incorporated in and
 63 administered as a part of the Department of Education and the Arts:

64 (1) Library Commission provided in §10-1-1 *et seq.* of this code;

65 (2) Division of Culture and History provided in §29-1-1 *et seq.* of this code; and

66 (3) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

67 (g) The Educational Broadcasting Authority provided in §10-5-1 *et seq.* of this code is part
 68 of the Department of Education and the Arts for the purposes of administrative support and liaison
 69 with the office of the Governor.

70 (h) Effective July 1, 2019, the following agencies and boards, including all of the allied,
 71 advisory, affiliated or related entities and funds associated with any agency or board, are
 72 incorporated in and administered as a part of the Department of Health and ~~Human Resources~~
 73 Compliance:

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

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

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

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

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

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

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

83 ~~(8) (1) The Bureau for Child Support Enforcement Division provided in chapter 48 of this~~
 84 ~~code.~~

85 (2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code.

86 (3) Health Care Authority provided in §16-29B-1 *et seq.* of this code;

87 (4) The following regulatory boards which shall remain as autonomous entities but may

88 request administrative support and coordination by the Department of Health and Compliance for
89 purposes of consistency of service delivery:

90 (A) Acupuncture Board provided in §30-36-1 et seq. of this code;

91 (B) Board of Chiropractic provided in §30-16-1 et seq. of this code;

92 (C) Board of Dentistry provided in §30-4-1 et seq. of this code including, the following
93 ancillary duties of the Board of Dentistry:

94 (i) Administration of anesthesia by dentist provided in §30-4A-1 et seq. of this code; and

95 (ii) Dental laboratory services provided in §30-4B-1 et seq. of this code.

96 (D) Board of Directors for the West Virginia Center for Nursing provided in §30-7B-1 et
97 seq. of this code;

98 (E) Board of Examiners in Counseling provided in §30-31-1 et seq. of this code;

99 (F) Board of Examiners for Licensed Practical Nurses provided in §30-7A-1 et seq. of this
100 code;

101 (G) Board of Examiners of Psychologist provided in §30-21-1 et seq. of this code;

102 (H) Board of Examiners for Registered Professional Nurses provided in §30-7-1 et seq. of
103 this code including the following ancillary duties of the Board of Examiners for Registered
104 Professional Nurses:

105 (i) Dialysis technicians provided in §30-7C-1 et seq. of this code;

106 (ii) Medication assistive persons provided in §30-7D-1-et seq. of this code;

107 (iii) Nurse health programs provided in §30-7E-1 et seq. of this code; and

108 (iv) Nurse midwives provided in §30-15-1 et seq. of this code.

109 (I) Board of Examiners for Speech-Language Pathology and Audiology provided in §30-
110 32-1 et seq. of this code;

111 (J) Board of Licensed Dieticians provided in §30-35-1 et seq. of this code;

112 (K) Board of Medicine provided in §30-3-1 et seq. of this code and the Board of
113 Osteopathic Medicine provided in §30-14-1 et seq. of this code including the following ancillary

114 duties of the Board of Medicine and the Board of Osteopathic Medicine:

115 (i) Management of pain provided in §30-3A-1 et seq. of this code;

116 (ii) Physician health programs provided in §30-3D-1 et seq. of this code; and

117 (iii) Physician assistants practice provided in §30-3D-1 et seq. of this code.

118 (L) Board of Optometry provided in §30-8-1 et seq. of this code including the ancillary

119 duties of the Board of Optometry relative to eye care consumer protection provided in §30-8A-1

120 et seq. of this code;

121 (M) Board of Pharmacy provided in §30-5-1 et seq. of this code;

122 (N) Board of Physical Therapy provided in §30-20-1 et seq. of this code including the

123 ancillary duties of the Board of Physical Therapy relative to athletic trainers provided in §30-20A-

124 1 et seq. of this code;

125 (O) Board for Respiratory Care provided in §30-34-1 et seq. of this code;

126 (P) Massage Therapy Licensure Board provided in §30-37-1 et seq. of this code;

127 (Q) Medical Imaging and Radiation Therapy Technology Board of Examiners provided in

128 §30-23-1 et seq. of this code; and

129 (R) Nursing Home Administrators Licensing Board provided in §30-25-1 et seq. of this

130 code.

131 (5) The following functions shall also transfer to the Department of Health and Compliance

132 effective July 1, 2019:

133 (A) Health Care peer review organization protections provided in §30-3C-1 et seq. of this

134 code; and

135 (B) Qualification for Armed Forces Health Technicians for Civilian Health Occupations

136 provided in §30-24-1 et seq. of this code.

137 (j) Effective July 1, 2019, the following agencies and boards, including all of the allied,

138 advisory, affiliated or related entities and funds associated with any agency or board, are

139 incorporated in and administered as a part of the Department of Human Services:

- 140 (1) Bureau for Behavioral Health provided in §27-2-1 et seq. of this code;
- 141 (2) Commission on Intellectual Disability provided in §29-15-1 et seq. of this code; and
- 142 (3) Bureau for Economic Assistance provided in chapter 9 of this code, including Special
 143 Supplementary Food Program for Women, Infants and Children (WIC);
- 144 (4) Bureau for Child and Family Services provided in chapter 9 of this code, which includes
 145 the Division of Juvenile Services provided in §49-2-1 et seq. of this code and the Office of
 146 Maternal, Child and Family Health as set forth in chapter 9 of this code;
- 147 (5) Board of Social Work provided in §30-30-1 et seq. of this code;
- 148 (6) Human Rights Commission provided in §5-11-1 et seq. of this code;
- 149 (7) Women's Commission provided in §29-20-1 et seq. of this code;
- 150 (8) Bureau for Medical Services provided in chapter 9 of this code and Early and Periodic
 151 Screening, Diagnostic and Treatment programs; and
- 152 (9) Children's Health Insurance Program provided in chapter 9 of this code.
- 153 (k) Effective July 1, 2019, the following state owned and operated facilities, including all of
 154 the allied, advisory, affiliated or related entities and funds associated with any facility, are
 155 incorporated in and administered as a part of the Department of Healthcare Facilities:
- 156 (1) The Welch Community Hospital;
- 157 (2) William R. Sharpe, Jr. Hospital;
- 158 (3) Mildred-Mitchell Bateman Hospital;
- 159 (4) Hopemont Hospital;
- 160 (5) John Manchin Health Care Center;
- 161 (6) Lakin Hospital;
- 162 (7) Jackie Withrow Hospital; and
- 163 (8) The West Virginia Children's Home.
- 164 (†) (l) The following agencies and boards, including all of the allied, advisory, affiliated or
 165 related entities and funds associated with any agency or board, are incorporated in and

166 administered as a part of the Department of Military Affairs and Public Safety:

167 (1) Adjutant General's Department provided in §15-1A-1 *et seq.* of this code;

168 (2) Armory Board provided in §15-6-1 *et seq.* of this code;

169 (3) Military Awards Board provided in §15-1G-1 *et seq.* of this code;

170 (4) West Virginia State Police provided in §15-2-1 *et seq.* of this code;

171 (5) Division of Homeland Security and Emergency Management and Disaster Recovery
172 Board provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided
173 in §15-5A-1 *et seq.* of this code;

174 (6) Sheriffs' Bureau provided in §15-8-1 *et seq.* of this code;

175 (7) Division of Justice and Community Services provided in §15-9A-1 *et seq.* of this code;

176 (8) Division of Corrections provided in chapter 25 of this code;

177 (9) Fire Commission provided in §29-3-1 *et seq.* of this code;

178 (10) Regional Jail and Correctional Facility Authority provided in §31-20-1 *et seq.* of this
179 code; and

180 (11) Board of Probation and Parole provided in §62-12-1 *et seq.* of this code.

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

184 (1) Tax Division provided in chapter 11 of this code;

185 (2) Racing Commission provided in §19-23-1 *et seq.* of this code;

186 (3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;

187 (4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

188 (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of
189 this code and §60-2-1 *et seq.* of this code;

190 (6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* -one-a of this
191 code;

192 (7) Lending and Credit Rate Board provided in chapter 47A of this code;

193 (8) Division of Banking provided in §31A-2-1 *et seq.* of this code;

194 (9) The State Budget Office provided in ~~article two of this chapter~~ §11B-2-1 *et seq.* of this
195 code;

196 (10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

197 (11) The Office of Tax Appeals provided in §11-10A-1 of this code; and

198 (12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

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

202 (1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

203 (2) Parkways, Economic Development and Tourism Authority provided in §17-16A-1 *et*
204 *seq.* of this code;

205 (3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

206 (4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;

207 (5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

208 (6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

209 (7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

210 ~~(l)~~ (o) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code,
211 including all of the allied, advisory, affiliated or related entities and funds associated with it, is
212 incorporated in and administered as a part of the Department of Veterans' Assistance.

213 ~~(m)~~ (p) Except for powers, authority and duties that have been delegated to the secretaries
214 of the departments by the provisions of §5F-2-2 of this code, the position of administrator and the
215 powers, authority and duties of each administrator and agency are not affected by the enactment
216 of this chapter.

217 ~~(n)~~ (q) Except for powers, authority and duties that have been delegated to the secretaries

218 of the departments by the provisions of §5F-2-2 of this code, the existence, powers, authority and
219 duties of boards and the membership, terms and qualifications of members of the boards are not
220 affected by the enactment of this chapter. All boards that are appellate bodies or are independent
221 decision makers shall not have their appellate or independent decision-making status affected by
222 the enactment of this chapter.

223 ~~(p)~~ (r) Any department previously transferred to and incorporated in a department by prior
224 enactment of this section means a division of the appropriate department. Wherever reference is
225 made to any department transferred to and incorporated in a department created in §5F-1-2 of
226 this code, the reference means a division of the appropriate department and any reference to a
227 division of a department so transferred and incorporated means a section of the appropriate
228 division of the department.

229 ~~(p)~~ (s) When an agency, board or commission is transferred under a bureau or agency
230 other than a department headed by a secretary pursuant to this section, that transfer is solely for
231 purposes of administrative support and liaison with the Office of the Governor, a department
232 secretary or a bureau. Nothing in this section extends the powers of department secretaries under
233 §5F-2-2 of this code to any person other than a department secretary and nothing limits or
234 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this
235 code.

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

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

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

6 (2) Cause the various agencies and boards to be operated effectively, efficiently and
7 economically and develop goals, objectives, policies and plans that are necessary or desirable

8 for the effective, efficient and economical operation of the department;

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

11 (4) Transfer permanent state employees between departments in accordance with the
12 provisions of §5F-2-7 of this code;

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

15 (6) Reorganize internal functions or operations;

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

29 (8) Enter into contracts or agreements requiring the expenditure of public funds and
30 authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the
31 powers granted to the secretary to enter into contracts or agreements and to make expenditures
32 or obligations of public funds under this provision shall not exceed or be interpreted as authority
33 to exceed the powers granted by the Legislature to the various commissioners, directors or board

34 members of the various departments, agencies or boards that comprise and are incorporated into
35 each secretary's department under this chapter;

36 (9) Acquire by lease or purchase property of whatever kind or character and convey or
37 dispose of any property of whatever kind or character as authorized by law: *Provided*, That the
38 powers granted to the secretary to lease, purchase, convey or dispose of such property shall be
39 exercised in accordance with the provisions of §5A-3-1 *et seq.*, §5A-10-1 *et seq.* and §5A-11-1 *et*
40 *seq.* of this code: *Provided, however*, That the powers granted to the secretary to lease, purchase,
41 convey or dispose of such property shall not exceed or be interpreted as authority to exceed the
42 powers granted by the Legislature to the various commissioners, directors or board members of
43 the various departments, agencies or boards that comprise and are incorporated into each
44 secretary's department under this chapter;

45 (10) Conduct internal audits;

46 (11) Supervise internal management;

47 (12) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make
48 effective the powers, authority and duties granted and imposed by the provisions of this chapter
49 in accordance with the provisions of chapter 29A of this code;

50 (13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2
51 of this code, by any administrator, agency or board within the department. Without written
52 consent, no proposal for a rule shall have any force or effect;

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

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

58 (b) The secretaries of the departments hereby created shall engage in a comprehensive
59 review of the practices, policies and operations of the agencies and boards within their

60 departments to determine the feasibility of cost reductions and increased efficiency which may be
61 achieved therein, including, but not limited to, the following:

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

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

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

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

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

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

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

79 (d) The layoff and recall rights of employees within the classified service of the state as
80 provided in §29-6-10(5) and §29-6-10(6), of this code shall be limited to the organizational unit
81 within the agency or board and within the occupational group established by the classification and
82 compensation plan for the classified service of the agency or board in which the employee was
83 employed prior to the agency or board's transfer or incorporation into the department: *Provided,*
84 That the employee shall possess the qualifications established for the job class. The duration of
85 recall rights provided in this subsection shall be limited to two years or the length of tenure,

86 whichever is less. Except as provided in this subsection, nothing contained in this section shall
87 be construed to abridge the rights of employees within the classified service of the state as
88 provided in §29-6-10 and §29-6-10a of this code.

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

§5F-2-7. Interdepartmental transfer of permanent state employees.

1 (a) A department secretary may enter into a memorandum of understanding with another
2 department secretary to transfer a permanent state employee from a position that is to be
3 consolidated or eliminated, to a funded vacant position in another department, in accordance with
4 the provisions of this section and the law. To support the transfer of the employee, a department
5 secretary may also transfer furniture and equipment, except motor vehicles and any assets
6 purchased by designated funds for specific uses and purposes, the removal of which is prohibited
7 by law or would jeopardize federal funds, grants or other funding sources.

8 (b) The transferred employee shall receive the same level of benefits and rate of
9 compensation or higher, and shall retain the same level of seniority.

10 (c) An employee shall be given notice of the proposed transfer at least fifteen days prior
11 to the transfer. During the notice period, an affected employee may agree to be voluntarily
12 transferred.

13 (d) If an employee does not volunteer to be transferred, then an involuntary transfer may
14 be ordered. An involuntary transfer shall begin with the least senior permanent employee who
15 qualifies for the position.

16 (e) A classified employee who is transferred shall retain his or her classified status:
17 *Provided*, That any transfer shall be made in accordance with the law.

18 (f) An involuntary transfer may be rejected by an employee if the involuntary transfer would
19 require the employee to travel thirty miles or more, one way, than the distance the employee
20 currently travels from his or her current job site.

21 (g) An employee who qualifies for and chooses to reject a transfer shall be laid off in
22 accordance with the law.

23 (h) Nothing in this section shall abridge any other rights provided by law.

24 (i) Prior to December 31, 2005, the Division of Personnel shall promulgate an emergency
25 rule in accordance with the provisions of §29A-3-1 *et seq.* of this code, to effectuate the provisions
26 of this section. The provisions of this section and the rules promulgated pursuant to this section
27 shall apply to all changes made to this article during the 2018 Regular Session of the Legislature.
28 The Division of Personnel shall make any necessary changes to the rules authorized by this
29 section to effectuate those changes. Any necessary changes to the rules shall be filed as an
30 emergency rule in accordance with the provisions of §29A-3-1 *et seq.* of this code.

31 (j) The Division of Personnel is authorized to promulgate legislative rules in accordance
32 with the provisions of §29A-3-1 *et seq.* of this code, to effectuate the provisions of this section.

33 (k) Annually, on or before January 1, the Division of Personnel shall report to the Joint

34 Committee on Government and Finance, on all interdepartmental employee transfers, including
35 but not limited to, voluntary and involuntary transfers, furniture and equipment transfers, and the
36 departments involved in the transfers.

ARTICLE 3. FUTURE REORGANIZATION; SEVERABILITY.

§5F-3-1. Recommendations for further reorganization.

1 The Governor shall submit to the ~~Legislature~~ Joint Committee on Government and
2 Finance on or before ~~January 1, 1994~~ June 30, 2019, a report setting forth the reorganization
3 implemented by executive action pursuant to this chapter and resulting cost savings as
4 determined by the Governor, any recommendations for further reorganization requiring legislative
5 action and drafts of recommended legislation to implement the reorganization requiring legislative
6 action.

§5F-3-2. Operative dates.

1 The provisions of this chapter shall become operative as to any department created in
2 §5F-1-2 of this code ~~upon the appointment of the secretary of such department~~ on July 1, 2019.

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; Director, Human Rights Commission,
15 \$55,000; Commissioner, Division of Labor, \$70,000; prior to July 1, 2011, Director, Division of
16 Veterans Affairs, \$65,000; Chairperson, Board of Parole, \$55,000; members, Board of Parole,
17 \$50,000; members, Employment Security Review Board, \$17,000; and Commissioner, Workforce
18 West Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows:
19 Health and ~~Human Resources and Compliance~~, \$95,000: ~~Provided, That effective July 1, 2013,~~
20 ~~the Secretary of the Department of Health and Human Resources shall be paid an annual salary~~
21 ~~not to exceed \$175,000~~ Human Services, \$95,000; Healthcare Facilities, \$95,000;
22 Transportation, \$95,000: *Provided, however,* That if the same person is serving as both the
23 Secretary of Transportation and the Commissioner of Highways, he or she shall be paid \$120,000;
24 Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration, \$95,000;
25 Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000; and
26 Environmental Protection, \$95,000: *Provided further,* That any officer specified in this subsection
27 whose salary is increased by more than \$5,000 as a result of the amendment and reenactment
28 of this section during the 2011 regular session of the Legislature shall be paid the salary increase
29 in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided
30 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; Executive Director, Regional
42 Jail and Correctional Facility Authority, \$80,000 and Executive Director of the Health Care
43 Authority, \$80,000.

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

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

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

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

60 increase for his or her employees. The Attorney General shall prepare and distribute the form to
61 the affected spending units.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

1 This article shall, without reference to any other statute or charter provision, be deemed
2 full authority for the acquisition, construction, establishment, extension, equipment, additions,
3 betterment, improvement, repair, maintenance and operation of or to a waterworks or electric
4 power system or for the construction of any additions, betterments, improvements, repairs,
5 maintenance or operation of or to an existing electric power system as herein provided and for
6 the issuance and sale of the bonds or the alternative methods of financing by this article
7 authorized, and shall be construed as an additional and alternative method therefor and for the
8 financing thereof, and no petition, referendum or election or other or further proceeding with
9 respect to any such undertaking or to the issuance or sale of bonds or the alternative methods of
10 financing under the provisions of this article and no publication of any resolution, ordinance, order,
11 notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds or
12 the alternative methods of financing shall be required, except as prescribed by this article, any
13 provisions of other statutes of the state to the contrary notwithstanding: *Provided*, That all
14 functions, powers and duties of the ~~state division of health~~ Department of Health and Compliance
15 shall remain unaffected by this article.

16 This article shall be construed as cumulative authority for any undertaking herein
17 authorized, and shall not be construed to repeal any existing laws with respect thereto.

CHAPTER 9. REORGANIZATION OF THE DEPARTMENT OF HEALTH

AND HUMAN RESOURCES.

ARTICLE 1. LEGISLATIVE PURPOSE.

§9-1-101. Legislative findings.

1 (a) The Legislature finds that it is necessary to reorganize the West Virginia Department
2 of Health and Human Resources. The department was first created as the state department of
3 public assistance by chapter one, Acts of the Legislature, first extraordinary session, 1936, and
4 later reconstituted as the state department of welfare by chapter one hundred ten, Acts of the
5 Legislature, regular session, 1961.

6 (b) The Legislature finds that the state provides a number of assistance programs which
7 are established with the purpose of helping the citizens of the state who through the misfortunes
8 of life are in need of assistance and encouragement. These services consist of monetary and
9 economic assistance, medical assistance, services available to families and children in distress
10 and regulation of healthcare and medical services.

11 (c) The department and its predecessors were created to provide these services, however,
12 the department has grown into an unmanageable bureaucracy. This growth has resulted in the
13 delivery of services to the residents of this state in an inferior manner.

§9-1-102. Reorganization; effective date; transition plans.

1 (a) Effective July 1, 2019, the Department of Health and Human Resources shall be
2 reorganized into four separate entities: The Department of Health and Compliance, the
3 Department of Healthcare Facilities; the Inspector General and the Department of Human
4 Services. Each department shall have the entities prescribed to it as set forth in §5F-2-1 et seq.
5 and elsewhere in this code. The functions, powers and duties of each department shall be as set
6 forth in this chapter. It is the intention of the Legislature in developing these new entities that they
7 be developed and operate as much as practical and possible within the current budget of the
8 Department of Health and Human Resources.

9 (b) The Secretary of the Department of Health and Human Resources shall develop a plan
10 by September 1, 2018, for assigning and allocating existing employees among the four entities
11 and submit the plan to the Division of Personnel, the Governor and the Joint Committee on
12 Government and Finance. The purpose of this plan is to consolidate job functions of current
13 employees of the Department of Health and Human Resources, where possible, and assign
14 current employees among the four newly created entities. The plan should also provide for
15 administrative functions such as internal personnel matters, internal purchasing matters, legal
16 matters, client/customer service matters, agency media issues and any other function not listed
17 in this subsection to be accomplished by allocating existing employees or sharing employees
18 among these four entities in an attempt to remain as revenue neutral as possible. Each of the
19 secretaries of the newly created departments is granted specific authority to enter into
20 agreements and memorandums of understanding among the four entities to share costs,
21 employees and functions to remain as much as possible within the current budget allocation.

22 (c) Included in the plan as set forth in subsection (b) of this section shall be any
23 recommendation which indicates that functions may not be shared among the four entities,
24 recommends or requires a newly created position or hiring additional personnel shall contain a
25 written justification which:

26 (1) Details the need for the position;

27 (2) Offers and explanation as to why the function cannot be shared between entities;

28 (3) Details why the functions of the position cannot be accomplished by transferring or
29 utilizing existing employees;

30 (4) Sets out salary, job duties and requirements, education and background requirements,
31 to whom they will report; and

32 (5) Indicates an internal funding source to pay the newly created position beyond an
33 additional legislative appropriation.

34 (d) The Secretary of the Department of Health and Human Resources shall develop and

35 implement a plan for the transfer of all functions of the Department of Health and Human
36 Resources to the appropriate entity of the four entities created by this chapter. The Secretary of
37 the Department of Health and Human Resources shall consider as part of this plan any existing
38 function of the Department of Health and Human Resources which may be privatized to make the
39 function more accessible and responsive to the public and more cost effective to the state. The
40 plan shall be prepared in as revenue neutral a manner as possible. It shall be submitted in writing
41 to the Joint Committee on Government and Finance, the Governor, the Secretary of the
42 Department of Administration and the Division of Personnel. This plan shall be submitted no later
43 than January 1, 2019. The plan shall include proposals for the following:

44 (1) As much as possible, a means to make the transfer of all functionality of the
45 Department of Health and Human Resources revenue neutral;

46 (2) A plan to transfer all existing and ongoing functions of the Department of Health and
47 Human Resources to the appropriate department; including rulemaking authority;

48 (3) Functions which may be privatized to increase efficiency and potentially lower costs.

49 (4) A means to allow the Inspector General to function as an it is intended in this chapter
50 as an investigative and fraud management unit across the Department of Healthcare Facilities,
51 the Department of Health and Compliance and the Department of Human Services;

52 (5) Notwithstanding any provision of the code to the contrary, to provide for the continued
53 ability to transfer funds by agreement among entities of the four entities set forth in this chapter;

54 (6) Closing out and transferring existing budget allocations, if necessary;

55 (7) A means of developing agreements and memorandum of understanding between the
56 four entities to share space, supplies, duties, employees and personnel, administrative functions,
57 data and information, common policies and procedures and any other matters which may be
58 performed jointly among the four entities;

59 (8) A transition plan developed in conjunction with the Division of Personnel for the transfer
60 of employees to the appropriate department;

61 (9) In consultation with the Department of Administration, discontinuation of use of the
62 current building including termination of any lease or rental agreements, if necessary;

63 (10) In consultation with the Department of Administration, disposition of all state owned
64 or leased office furniture and equipment, including any state-owned vehicles, if necessary;

65 (11) Notwithstanding any provisions of this code to the contrary, the ability to exchange
66 data and information as necessary for the proper operation and functionality of the four entities
67 created in this chapter;

68 (12) Transition to appropriate entities or destruction of hard and electronic copies of files;
69 and

70 (13) Any other matters which would effectively transfer all functions of the Department of
71 Health and Human Resources.

**§9-1-103. Legislative Intent; continuation of existing statutory provisions; no increase in
funding obligations.**

1 In restructuring the Department of Health and Human Resources during the regular
2 session of the Legislature in the year 2018, it is intended by the Legislature that each specific
3 existing function of the Department of Health and Human Resources continue and that
4 modifications to the statutory authority of the Department of Health and Human Resources be
5 continued in the four newly created entities and that substantively similar prior statutory provisions
6 will be construed as continuing the intended meaning of the corresponding prior statutory
7 provisions and any existing judicial interpretation of the prior statutory provisions. It is not the
8 intent of the Legislature, by restructuring the Department of Health and Human Resources during
9 the regular session of the Legislature in the year 2018 to alter the substantive law of this state as
10 it relates to powers and duties assigned to the Department of Health or Human Resources or to
11 increase or enlarge any funding obligation of any spending unit of the state.

§9-1-104. Forms; no increase of funding obligations to be construed.

1 (a) None of the newly created entities are required to change any form or letter that

2 contains a citation to this code that is changed or otherwise affected by the changes to this
3 chapter, chapter 16 of this code, or to chapter 27 of this code during the 2018 regular session of
4 the Legislature unless specifically required by a provision of this code.

5 (b) No modification to any provision of this chapter, chapter 16 of this code, or chapter 27
6 of this code during the 2018 regular session of the Legislature may be construed to increase or
7 enlarge any funding obligation of any spending unit of the state.

ARTICLE 2. DEPARTMENT OF HEALTH AND COMPLIANCE.

PART ONE. DEFINED WORDS AND PHRASES.

§9-2-101. Definitions.

1 (a) As used in this article:

2 "Commissioner" means either the Commissioner of the Bureau for Public Health or the
3 Commissioner of the Bureau for Child Support Enforcement as the context dictates.

4 "Department" means the Department of Health and Compliance.

5 "Federal assistance" means and includes all forms of aid, care, assistance and services
6 to or on behalf of persons, which are authorized by, and who are authorized to receive the same
7 under any act of Congress for distribution through the department, the cost of which is paid entirely
8 out of federal appropriations.

9 "Federal-state assistance" means and includes:

10 (A) All forms of aid, care, assistance and services to, or on behalf of, persons, which are
11 authorized by, and who are authorized to receive the same under and by virtue of, subchapters
12 one, four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United
13 States Code;

14 (B) All forms of aid, care, assistance and services to persons, which are authorized by,
15 and who are authorized to receive the same under and by virtue of, any act of Congress, other
16 than the federal social security act, as amended, for distribution through the department to

17 recipients of any form of aid, care, assistance and services to persons designated or referred to
18 in paragraph (A) and to recipients of state assistance.

19 "Person" means any individual, corporation, association, partnership, proprietor, agent,
20 assignee or entity.

21 "Secretary" means the Secretary of the Department of Health and Compliance.

22 "State assistance" means all forms of aid, care, assistance, services and general relief
23 made possible solely out of state, county and private appropriations to, or on behalf of, indigent
24 persons.

25 (b) All other definitions relative to public health are those set out in §16-1-1 et seq. of this
26 code.

27 (c) All other definitions relative to behavioral health are those set out in §27-1-1 et seq. of
28 this code.

PART TWO. GENERAL PROVISIONS.

§9-2-201. Creation of department.

1 (a) The Legislature hereby creates the Department of Health and Compliance. In creating
2 this department, the Legislature intends to continue on a reorganized basis state compliance
3 programs previously administered by the Department of Health and Human Resources and its
4 predecessor agency. The purpose of this agency is to regulate public health programs, provide
5 administrative oversight of specified regulatory boards, administration of certain licensed facilities,
6 enforcement of familial support obligations and education to the citizens of this state. These
7 changes shall become effective July 1, 2019.

8 (b) The rules of the Secretary of the Department of Health and Human Resources, the
9 Bureau for Public Health, the Bureau for Child Support Enforcement and the West Virginia Health
10 Care Authority shall remain in effect until they are amended or rescinded by the Secretary of the
11 Department of Health and Compliance.

§9-2-202. Department agencies.

1 (a) The Department of Health and Compliance shall consist of the Bureau for Public Health
2 set forth in chapter 16 of this code, the Bureau Child Support Enforcement, set forth in chapter 48
3 of this code and the Health Care Authority set forth in chapter 16 of this code. All functions,
4 powers, duties, employees and responsibilities of these entities shall transfer to the Department
5 of Health and Compliance on the first day of July, 2019.

6 (b) The following regulatory boards, as provided in chapter 30 of this code, shall remain
7 as autonomous entities but may be subject to administrative oversight of the Department of Health
8 and Compliance for purposes of consistency of service delivery:

9 (1) Acupuncture Board provided in §30-36-1 et seq. of this code;

10 (2) Board of Chiropractic provided in §30-16-1 et seq. of this code;

11 (3) Board of Dentistry provided in §30-4-1 et seq. of this code including the following
12 ancillary duties of the Board of Dentistry:

13 (A) Administration of anesthesia by dentist provided in §30-4A-1 et seq. of this code; and

14 (B) Dental laboratory services provided in §30-4B-1 et seq. of this code.

15 (4) Board of Directors for the West Virginia Center for Nursing provided in §30-7B-1 et
16 seq. of this code;

17 (5) Board of Examiners in Counseling provided in §30-31-1 et seq. of this code;

18 (6) Board of Examiners for Licensed Practical Nurses provided in §30-7A-1 et seq. of this
19 code;

20 (7) Board of Examiners of Psychologist provided in §30-21-1 et seq. of this code;

21 (8) Board of Examiners for Registered Professional Nurses provided in §30-7-1 et seq. of
22 this code including the following ancillary duties of the Board of Examiners for Registered
23 Professional Nurses:

24 (A) Dialysis technicians provided in §30-7C-1 et seq. of this code;

25 (B) Medication assisted persons provided in §30-7D-1 et seq. of this code;

26 (C) Nurse health programs provided in §30-7E-1 et seq. of this code; and

- 27 (D) Nurse midwives provided in §30-15-1 et seq. of this code.
- 28 (9) Board of Examiners for Speech-Language Pathology and Audiology provided in §30-
- 29 32-1 et seq. of this code;
- 30 (10) Board of Licensed Dieticians provided in §30-35-1 et seq. of this code;
- 31 (11) Board of Medicine provided in §30-3-1 et seq. of this code and the Board of
- 32 Osteopathic Medicine provided in §30-14-1 et seq of this code of including the following ancillary
- 33 duties of the Board of Medicine and the Board of Osteopathic Medicine:
- 34 (A) Management of pain provided in §30-3A-1 et seq. of this code;
- 35 (B) Physician health programs provided in §30-3D-1 et seq. of this code; and
- 36 (C) Physician assistants practice provided in §30-3E-1 et seq. of this code;
- 37 (12) Board of Optometry provided in §30-8-1 et seq. of this code including the ancillary
- 38 duties of the Board of Optometry relative to eye care consumer protection provided in §30-8A-1
- 39 et seq. of this code;
- 40 (13) Board of Pharmacy provided in §30-5-1 et seq. of this code;
- 41 (14) Board of Physical Therapy provided in §30-20-1 et seq. of this code including the
- 42 ancillary duties of the Board of Physical Therapy relative to athletic trainers provided in §30-20A-
- 43 1 et seq. of this code;
- 44 (15) Board for Respiratory Care provided in §30-34-1 et seq. of this code;
- 45 (16) Massage Therapy Licensure Board provided in §30-37-1 et seq. of this code;
- 46 (17) Medical Imaging and Radiation Therapy Technology Board of Examiners provided in
- 47 §30-23-1 et seq. of this code;
- 48 (18) Nursing Home Administrators Licensing Board provided in §30-25-1 et seq. of this
- 49 code; and
- 50 (19) Board of Social Work provided in §30-30-1 et seq. of this code.
- 51 (c) The following functions shall also transfer to the Department of Health and Compliance
- 52 effective July 1, 2019:

53 (1) Health Care peer review organization protections provided in §30-3C-1 et seq. of this
54 code; and

55 (2) Qualification for Armed Forces Health Technicians for Civilian Health Occupations
56 provided in §30-24-1 et seq. of this code.

PART THREE. ORGANIZATION; POWERS AND DUTIES OF THE DEPARTMENT AND
SECRETARY.

**§9-2-301. Responsibility and powers of department; information and data to be supplied
by other agencies.**

1 (a) The department is charged with administering public health, healthcare compliance,
2 administrative oversight of specified regulatory boards, licensing of certain juvenile and child care
3 facilities and enforcement of familial support obligations. This shall include:

4 (1) All powers, not inconsistent with state law, as may be necessary for this state to obtain
5 maximum federal funds made available for federal-state assistance within whatever limits or
6 restrictions may be imposed by, or may exist by reason of the amount of state funds appropriated
7 for such under the state's budget act and supplementary appropriation acts; and

8 (2) All powers, not inconsistent with state law, as may be necessary for the disbursement
9 and distribution of services to those persons qualified therefor in as prompt, fair, orderly, efficient
10 and economical manner as possible.

11 (b) The department is charged with ensuring healthy environments for clients, patients and
12 residents within hospitals and other healthcare facilities by promoting the quality services and high
13 standards of care that exist when facilities are in compliance with state licensure rules and federal
14 certification regulations.

15 (c) Notwithstanding any other provision of this code to the contrary, each department,
16 agency, commission or board of state government shall make available to the department such
17 information and data as each department, agency, commission or board may collect about any
18 applicant for, or recipient of, any type of federal or state public health or familial support services

19 upon such terms as may be prescribed by the Governor, if the information and data would be
20 relevant in determining whether the applicant or recipient is eligible for any public or familial
21 support services, and after the information and data have been obtained by the department, the
22 same shall be used only by the department in carrying out and discharging its powers, duties and
23 responsibilities.

§9-2-302. Secretary of the department; qualifications.

1 (a) The administrative head of the department is the secretary, who shall be appointed
2 and compensated, as provided by §6-7-1 et seq. of this code.

3 (b) Before entering upon the duties of his or her office, the secretary shall take and
4 subscribe to the oath of office prescribed by section five, article four of the state Constitution.

5 (c) The secretary may not be a candidate for, or hold, any other public office or public
6 employment or be a member or officer of any political party committee, or serve as an election
7 official, or engage in any political activity, other than to vote, in an election. Any violation by the
8 secretary of the provisions of this subsection shall automatically vacate his or her appointment as
9 secretary.

§9-2-303. Organization of department.

1 (a) The department shall consist of the Bureau for Public Health, the Bureau for Child
2 Support Enforcement and the Health Care Authority and the. Various regulatory boards set forth
3 in §9-2-202 of this code shall remain as autonomous entities but may be subject to administrative
4 oversight of the Department of Health and Compliance for purposes of consistency of service
5 delivery.

6 (b) Consistent with the provisions of §5F-2-1 of this code, the secretary may organize the
7 department into such other offices, divisions, agencies and other administrative units as he or she
8 sees as necessary.

§9-2-304. Acceptance of federal-state assistance and federal assistance.

1 The state and the department assent to the purposes of federal-state assistance and

2 federal assistance, accepts federal appropriations and other forms of assistance made under or
3 pursuant thereto, and authorizes the receipt of such appropriations into the state Treasury and
4 the receipt of other forms of assistance by the department for expenditure, disbursement, and
5 distribution by the department in accordance with the provisions of this chapter and the conditions
6 imposed by applicable federal laws, rules and regulations.

§9-2-305. Powers and duties of secretary.

1 Within limits of state appropriations and federal grants and subject to provisions of state
2 and federal laws and regulations, the secretary, in addition to all other powers, duties and
3 responsibilities granted and assigned to that office in this chapter and elsewhere by law, is
4 authorized to:

5 (1) Promulgate, amend, revise and rescind department rules respecting the organization
6 and government of the department and the execution and administration of those powers, duties
7 and responsibilities granted and assigned by this chapter and elsewhere by law to the department
8 and the secretary.

9 (2) Promulgate, amend, revise and rescind department rules and regulations respecting
10 qualifications for receiving public health and behavioral health services consistent with or
11 permitted by federal laws, rules and policies, but not inconsistent with state law.

12 (3) Promulgate, amend, revise and rescind department rules and regulations respecting
13 the various entities within the department. These rules shall include, but are not limited to:

14 (A) Operation of the certificate of need program;

15 (B) Grants and financial assistance to rural health systems and hospitals; and

16 (C) Quality control.

17 (4) For the protection of applicants and recipients of public health and familial support
18 services, the department shall be required to establish legislative rules governing the custody,
19 use and preservation of the records, papers, files and communications of the department.

20 (5) Obtain by purchase or lease grounds, buildings, office or other space, equipment,

21 facilities and services as may be necessary for the execution and administration of those powers,
22 duties and responsibilities granted and assigned by this chapter and elsewhere by law to the
23 department and the secretary.

24 (6) Sign and execute in the name of the state by the Department of Health and Compliance
25 any contract or agreement with the federal government or its agencies, other states, political
26 subdivisions of this state, corporations, associations, partnerships or individuals: *Provided*, That
27 the provisions of §5A-3-1 *et seq.* of this code are followed.

28 (7) Sign and execute a contract to implement independent professional consultant
29 contracts for department programs: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code
30 are followed.

31 (8) Establish such special funds as may be required by the federal Social Security Act, as
32 amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of
33 the benefits and provisions thereof relating to the federal-state assistance and federal assistance
34 programs administered by the department and to make payments into and disbursements out of
35 any such special fund or funds in accordance with the requirements of the federal Social Security
36 Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state
37 law and the objects and purposes of this chapter. In addition, the Department of Health and
38 Compliance, through the secretary, is hereby authorized to accept any and all gifts or grants,
39 whether in money, land, services or materials, which gift or gifts, if in the form of moneys, shall be
40 placed in a separate fund and expended solely for the purpose of public health and behavioral
41 health programs. No part of this special fund shall revert to the General Revenue Funds of this
42 state. No expenses incurred pursuant to this special fund shall be a charge against the General
43 Funds of this state.

44 (9) Provide at department expense a program of continuing professional, technical and
45 specialized instruction for the personnel of the department.

46 (10) Pay from available funds all or part of the reasonable expenses incurred by a person

47 newly employed by the department in moving his household furniture, effects and immediate
48 family from his or her place of residence in this state to his or her place of employment in this
49 state; and to pay from available funds all or part of the reasonable expenses incurred by a
50 department employee in moving his or her household furniture, effects and immediate family as
51 a result of a reassignment of the employee which is considered desirable, advantageous to and
52 in the best interests of the state, but no part of the moving expenses of any one such employee
53 shall be paid more frequently than once in twelve months or for any movement other than from
54 one place of employment in this state to another place of employment in this state.

55 (11) Establish a program to provide reimbursement to employees of the department whose
56 items of personal property, as defined by the department by policy, are damaged during the
57 course of employment or other work-related activity as a result of aggressive behavior by a client
58 or patient receiving services from the department: *Provided*, That such reimbursement is limited
59 to a maximum amount of \$250.00 per claim.

60 (12) If necessary, prepare and submit state plans which will meet the requirements of
61 federal laws, rules governing federal-state assistance and federal assistance and which are not
62 inconsistent with state law.

63 (13) Provide by rules, consistent with requirements of applicable federal laws and rules,
64 application forms and application procedures for the various classes of public health and familial
65 support services.

66 (15) (A) Serve, by certified mail or personal service, an administrative subpoena on any
67 person, corporation, partnership, financial institution, labor organization or state agency for an
68 appearance or for production of documents necessary for administration of the public assistance
69 programs of the department. In the case of disobedience to the subpoena, the secretary may
70 invoke the aid of any circuit court in requiring the appearance or production of records and
71 documents.

72 (B) Apply to the circuit court of any county in which any hearing is to be held, or the circuit

73 court in which the subpoena or subpoena duces tecum is to be served, or the judge of either such
74 court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel the
75 attendance of witnesses or the production of documents, before any hearing or administrative
76 tribunal convened to consider suspension or termination of any person or corporation from
77 providing services under the public assistance programs administered by the department.

78 (15) Delegate to the personnel of the department all powers and duties vested in the
79 secretary, except the power and authority to sign contracts and agreements.

80 (16) Make such reports in such form and containing such information as may be required
81 by applicable federal laws and rules respecting federal-state assistance and federal assistance.

82 (17) Invoke any legal, equitable or special remedies for the enforcement of the provisions
83 of this article.

§9-2-306. Transfer of functions to secretary.

1 In addition to other duties assigned to the secretary in this article, effective July 1, 2019,
2 the following functions as set out in the respective sections of the code shall become functions of
3 the secretary. Any reference in these sections to the Secretary of the Department of Health and
4 Human Resources or the Director of Health means the Secretary of the Department of Health and
5 Compliance:

6 (1) Uniform credentialing for health care practitioners as set forth in §16-1A-1 et seq. of
7 this code;

8 (2) Skilled Nursing Facilities for Veterans of the United States Armed Forces as set forth
9 in §16-1B-1 et seq. of this code;

10 (3) Health care provider transparency as set forth in §16-1C-1 et seq. of this code;

11 (4) Certificate of need as set forth in §16-2D-1 et seq. of this code;

12 (5) Provider Sponsored Networks as set forth in §16-2L-1 et seq. of this code;

13 (6) Neonatal abstinence centers as set forth in §16-2N-1 et seq. of this code;

14 (7) Clinical laboratory quality assurance as set forth in §16-5J-1 et seq. of this code;

15 (8) Licensure of radon mitigations, testers, contractors and laboratories as set forth in §16-
16 34-1 et seq. of this code;

17 (9) Clearance for Access: Registry and Employment Screening Act as set forth in §16-49-
18 1 et seq. of this code;

19 (10) Establishing additional substance abuse treatment facilities as set forth in §16-53-1
20 et seq. of this code; and

21 (11) The West Virginia Health Information Network as set forth in §16-29G-1 et seq. of this
22 code.

§9-2-307. Attorney General and prosecuting attorneys to render legal services to secretary and commissioner.

1 The Attorney General, the Attorney General’s assistants, and the prosecuting attorneys of
2 the various counties shall render to the secretary and the commissioner of the department, without
3 additional compensation, the legal services as the secretary and the commissioner of the
4 department shall require of them in the discharge of their duties. this section does not prohibit
5 the department from developing plans for cooperation with courts, prosecuting attorneys, and
6 other law-enforcement officials in a manner as to permit the state and its citizens to obtain
7 maximum fiscal benefits under federal laws, rules and regulations.

1 laws, rules and regulations.

ARTICLE 3. DEPARTMENT OF HUMAN SERVICES.

PART ONE. DEFINED WORDS AND PHRASES.

§9-3-101. Definitions.

1 The following words as used in this article shall have the following meaning unless the
2 context clearly indicates otherwise;

3 "Abuse" means the infliction or threat to inflict physical pain or injury on or the
4 imprisonment of any incapacitated adult or facility resident.

5 "Adult protective services agency" means any public or nonprofit private agency,
6 corporation, board or organization furnishing protective services to adults.

7 "Agency" means the Children's Health Insurance Agency.

8 "Approved accounts" means any retirement account that the secretary has determined is
9 not to be included as an asset in determining the eligibility of an individual for participation in the
10 buy-in program. Approved accounts may include, but not be limited to, private retirement
11 accounts such as individual retirement accounts; other individual accounts; and employer-
12 sponsored retirement plans such as 401(k) plans, Keogh plans and employer pension plans.

13 "Asset disregard" means, with regard to the state's medical assistance program,
14 disregarding any assets or resources in an amount equal to the insurance benefit payments that
15 are made to, or on behalf of, an individual who is a beneficiary under a qualified long-term care
16 insurance partnership policy.

17 "Assistance" means money payments, medical care, transportation and other goods and
18 services necessary for the health or welfare of individuals, including guidance, counseling and
19 other medical or public assistance services and shall include Federal-state assistance, federal
20 assistance and state assistance.

21 "At-risk family" means a group of persons living in the same household, living below the
22 federally designated poverty level, lacking the resources to become self-supporting and consisting
23 of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an
24 "at-risk family" may include an unmarried minor parent and his or her dependent child or children
25 who live in an adult-supervised setting.

26 "Autism spectrum disorder" means any pervasive developmental disorder, including
27 autistic disorder, Asperger's Syndrome, Rett syndrome, childhood disintegrative disorder, or
28 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and
29 Statistical Manual of Mental Disorders of the American Psychiatric Association.

30 "Basic coverage group" means an optional coverage group as defined by the Ticket to

31 Work and Work Incentives Improvement Act of 1999.

32 "Benefits" means money payments, goods, services, or any other thing of value.

33 "Beneficiary" or "participant" means any parent, work eligible individuals or caretaker-
34 relative in an at-risk family who receives cash assistance for himself or herself and family
35 members.

36 "Board" means the Children's Health Insurance Program Board.

37 "Board and Care Facility" means a residential setting where tow or more unrelated adults
38 receive nursing services or personal care services.

39 "Bureau" means:

40 (A) For purposes of part four of this article and part five of this article the term Bureau shall
41 refer to the Bureau for Child and Family Services;

42 (B) For purposes of parts six, seven and eight of this article the term bureau shall refer to
43 the Bureau for Economic Assistance; and

44 (C) For purposes of parts nine, ten, eleven, twelve, thirteen and fourteen of this article the
45 term bureau shall refer to the Bureau for Medical Services.

46 "Caretaker-relative" means grandparents or other nonparental caretakers not included in
47 the assistance group or receiving cash assistance directly.

48 "Caregiver" means a person or entity who cares for or shares in the responsibility for the
49 care of an incapacitated adult on a full-time or temporary basis, regardless of whether such person
50 or entity has been designated as a guardian or custodian of the incapacitated adult by any
51 contract, agreement or legal procedures. Caregiver includes health care providers, family
52 members, and any person who otherwise voluntarily accepts a supervisory role towards an
53 incapacitated adult.

54 "Cash assistance" means temporary assistance for needy families.

55 "Claim" means an application for payment for goods or services provided pursuant to the
56 medical programs of the Department of Human Services.

57 “Clinical trial” means a study that determines whether new drugs, treatments or medical
58 procedures are safe and effective on humans. To determine the efficacy of experimental drugs,
59 treatments or procedures, a study is conducted in four phases including the following:

60 (A) Phase II: The experimental drug or treatment is given to, or a procedure is performed
61 on, a larger group of people to further measure its effectiveness and safety.

62 (B) Phase III: Further research is conducted to confirm the effectiveness of the drug,
63 treatment or procedure, to monitor the side effects, to compare commonly used treatments and
64 to collect information on safe use.

65 (C) Phase IV: After the drug, treatment or medical procedure is marketed, investigators
66 continue testing to determine the effects on various populations and to determine whether there
67 are side effects associated with long-term use.

68 “Commissioner” means:

69 (A) For purposes of child and family services as set forth in part four of this article and
70 social services for adults as set forth in part five of this article the term commissioner shall refer
71 to the Commissioner for the Bureau for Child and Family Services;

72 (B) For purposes of public and economic assistance as set forth in parts six, seven and
73 eight of this article the term commissioner shall refer to the Commissioner for the Bureau for
74 Economic Assistance; and

75 (C) For purposes of medical assistance as set forth in parts nine, ten, eleven, twelve,
76 thirteen and fourteen of this article the commissioner shall refer to the Commissioner of the
77 Bureau for Medical Services.

78 “Cooperative group” means a formal network of facilities that collaborate on research
79 projects and have an established NIH-approved peer review program operating within the group.
80 This includes:

81 (A) The National Cancer Institute Clinical Cooperative Group;

82 (B) The National Cancer Institute Community Clinical Oncology Program;

83 (C) The AIDS Clinical Trial Group; and

84 (D) The Community Programs for Clinical Research in AIDS.

85 “Copayment” means a fixed fee to be paid by the patient at the time of each office visit,
86 outpatient service or filling of prescriptions.

87 “Cost-sharing” means the eligible participant will participate in the cost of the program by
88 paying the enrollment fee, monthly premiums and copayments if established by the department.

89 “Countable income” means income that does not exceed two hundred fifty percent of the
90 federal poverty level. For the purposes of this chapter, countable income does not include:

91 (A) The income of the individual’s spouse, parent or guardian with whom he or she resides;
92 and

93 (B) Income disregarded under the state Medicaid plan’s financial methodology, including
94 income disregarded pursuant to the federal supplemental security income program (42 U.S.C.
95 §1382) as impairment-related work expenses.

96 “Countable resources” means earned and unearned income. Countable resources do not
97 include:

98 (A) Liquid assets of up to \$5,000 for an individual;

99 (B) Liquid assets of up to \$10,000 for a family;

100 (C) Retirement accounts; and

101 (D) Independence accounts.

102 “Department” means the Department of Human Services.

103 “Director” means the Director of the Children’s Health Insurance Agency.

104 “Disability” means a medically determinable physical or mental condition that:

105 (A) Can be expected to result in death or has lasted, or can be expected to last, for a
106 continuous period of not less than twelve months; and

107 (B) Renders a person unable to engage in substantial gainful activity; and

108 (C) Is a disability defined by social security administration criteria and has been so

109 determined as such by either the Social Security Administration or the department.

110 "Domiciled in this state" means being physically present in West Virginia accompanied by
111 an intention to remain in West Virginia for an indefinite period of time, and to make West Virginia
112 his or her permanent home.

113 "Education and training" means hours spent regularly attending and preparing for classes
114 in any approved course of schooling or training.

115 "Eligible buy-in participant" means an individual who:

116 (A) Is a resident of the State of West Virginia;

117 (B) Has a disability as defined herein;

118 (C) Is at least sixteen years of age and less than sixty-five years of age;

119 (D) Is engaged in competitive employment, including self-employment or nontraditional
120 work that results in remuneration at or above minimum wage in an integrated setting;

121 (E) Has countable resources that do not exceed the resource limits as defined in this
122 chapter; and

123 (F) Has countable income that does not exceed the income limits as defined in this
124 chapter.

125 "Emergency" or "emergency situation" means a situation or set of circumstances which
126 presents a substantial and immediate risk of death or serious injury to an incapacitated adult.

127 "Entity" means any corporation, association, partnership, limited liability company, or other
128 legal entity.

129 "Enrollment fee" means a one-time fee to participate in the Medicaid buy-in program.

130 "Essential community health service provider" means a health care provider that:

131 (A) Has historically served medically needy or medically indigent patients and
132 demonstrates a commitment to serve low-income and medically indigent populations which
133 constitute a significant portion of its patient population or, in the case of a sole community provider,
134 serves medically indigent patients within its medical capability; and

135 (B) Either waives service fees or charges fees based on a sliding scale and does not
136 restrict access or services because of a client's financial limitations. Essential community health
137 service provider includes, but is not limited to, community mental health centers, school health
138 clinics, primary care centers, pediatric health clinics or rural health clinics.

139 "Estate" means all real and personal property and other assets included within the
140 individual's estate as defined in the state's probate law.

141 "FDA" means the federal Food and Drug Administration.

142 "Family assessments" means evaluation of the following: Work skills, prior work
143 experience, employability, education and challenges to becoming self-sufficient such as mental
144 health and physical health issues along with lack of transportation and child care.

145 "Facility resident" means an individual living in a nursing home or other facility, as that
146 term is defined in this section.

147 "Federal assistance" means and includes all forms of aid, care, assistance and services
148 to or on behalf of persons, which are authorized by, and who are authorized to receive the same
149 under any act of Congress for distribution through the department, the cost of which is paid entirely
150 out of federal appropriations.

151 "Federal benefit rate" means the amount of monthly federal or state benefits paid to
152 persons with limited income and resources who are age sixty-five or older, blind or disabled.

153 "Federal poverty level" means the level of personal or family income below which one is
154 classified as poor according to federal governmental standards, commonly referred to as the
155 federal poverty guidelines which are issued and printed each year in the federal register.

156 "Federal-state assistance" means and includes:

157 (A) All forms of aid, care, assistance and services to, or on behalf of, persons, which are
158 authorized by, and who are authorized to receive the same under and by virtue of, subchapters
159 one, four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United
160 States Code;

161 (B) All forms of aid, care, assistance and services to persons, which are authorized by,
162 and who are authorized to receive the same under and by virtue of, any act of Congress, other
163 than the federal social security act, as amended, for distribution through the department to
164 recipients of any form of aid, care, assistance and services to persons designated or referred to
165 in paragraph (A) and to recipients of state assistance.

166 "Financial Exploitation" means the intentional misappropriation or misuse of funds or
167 assets of another.

168 "General relief" means cash or its equivalent in services or commodities expended for
169 care and assistance to an indigent person other than for care in a county infirmary, child shelter
170 or similar institution.

171 "Incapacitated adult" means any person who by reason of physical, mental or other
172 infirmity is unable to independently carry on the daily activities of life necessary to sustaining life
173 and reasonable health.

174 "Income":

175 (1) For purposes of the West Virginia Works Act as set forth in this article income means
176 money received by any member of an at-risk family which can be used at the discretion of the
177 household to meet its basic needs. Income does not include:

178 (A) Supplemental security income paid to any member or members of the at-risk family;

179 (B) Earnings of minor children;

180 (C) Payments received from earned income tax credit or tax refunds;

181 (D) Earnings deposited in an individual development account approved by the department;

182 (E) Any educational grant or scholarship income regardless of source; or

183 (F) Any moneys specifically excluded from countable income by federal law.

184 (2) For purposes of determining Medicaid eligibility by the Bureau for Medical Services as
185 set forth in this article income means money earned from employment wages or self-employment
186 earnings and unearned money received from any other source.

187 “Independence accounts” means department-approved accounts established with the
188 department solely by funds paid from the earned income of an eligible buy-in participant to cover
189 expenses necessary to enhance or maintain his or her independence or increase employment
190 opportunities. Approved expenditures from the funds may include: Educational expenses; work-
191 related expenses; home purchase or modification; transportation; medical expenses; assistive
192 technology and related services; or for short-term living expenses in times of qualified
193 emergencies as determined by the department.

194 “Indigent person” means any person who is domiciled in this state and who is actually in
195 need as defined by department rules and has not sufficient income or other resources to provide
196 for such need as determined by the department.

197 “Legal representative” means a person lawfully invested with the power and charged with
198 the duty of taking care of another person or with managing the property and rights of another
199 person, including, but not limited to, a guardian, conservator, medical power of attorney
200 representative, trustee or other duly appointed person.

201 “Life-threatening condition” means a terminal condition or illness that according to current
202 diagnosis has a high probability of death within two years, even with treatment with an existing
203 generally accepted treatment protocol.

204 “Liquid assets” means cash or assets payable in cash on demand, including financial
205 instruments that can be converted to cash within twenty working days. National, state and local
206 holidays are not working days.

207 “Long-term care insurance” means a policy described in §33-15A-4 of this code.

208 “Long-term care partnership program” means a qualified state long-term care insurance
209 partnership as defined in 42 U.S.C. 1396, Section 1917(b) of the Social Security Act.

210 “Medicaid” means that assistance provided pursuant to a state plan implemented pursuant
211 to the provisions of subchapter nineteen, chapter seven, Title 42, United States Code, as that
212 chapter has been and may hereafter be amended.

213 "Medical services" means medical, surgical, dental and nursing services, and other
214 remedial services recognized by law, in the home, office, hospital, clinic and any other suitable
215 place, provided or prescribed by persons permitted or authorized by law to give such services;
216 the services to include drugs and medical supplies, appliances, laboratory, diagnostic and
217 therapeutic services, nursing home and convalescent care and such other medical services and
218 supplies as may be prescribed by the persons.

219 "Member" means a policyholder, subscriber, insured, certificate holder or a covered
220 dependent of a policyholder, subscriber, insured or certificate holder.

221 "Multiple project assurance contract" means a contract between an institution and the
222 federal Department of Health and Human Services that defines the relationship of the institution
223 to the federal Department of Health and Human Services and sets out the responsibilities of the
224 institution and the procedures that will be used by the institution to protect human subjects.

225 "NIH" means the National Institutes of Health.

226 "Neglect" means:

227 (A) The failure to provide the necessities of life to an incapacitated adult or facility resident
228 with intent to coerce or physically harm the incapacitated adult or resident; and

229 (B) The unlawful expenditure or willful dissipation of the funds or other assets owned or
230 paid to, or for the benefit of, an incapacitated adult or resident.

231 "Nonrecipient parent" means an adult or adults excluded or disqualified by federal or state
232 law from receiving cash assistance.

233 "Nursing home" or "facility" means any institution, residence, intermediate care facility for
234 the intellectually disabled, care home or any other adult residential facility, or any part or unit
235 thereof, that is subject to the provisions of §16-5C-1 et seq. of this code.

236 "Patient cost" means the routine costs of a medically necessary health care service that
237 is incurred by a member as a result of the treatment being provided pursuant to the protocols of
238 the clinical trial. Routine costs of a clinical trial include all items or services that are otherwise

239 generally available to beneficiaries of the insurance policies. "Patient cost" does not include:

240 (A) The cost of the investigational drug or device;

241 (B) The cost of non-health care services that a patient may be required to receive as a
242 result of the treatment being provided to the member for purposes of the clinical trial;

243 (C) Services customarily provided by the research sponsor free of charge for any
244 participant in the trial;

245 (D) Costs associated with managing the research associated with the clinical trial
246 including, but not limited to, services furnished to satisfy data collection and analysis needs that
247 are not used in the direct clinical management of the participant;

248 (E) Costs that would not be covered under the participant's policy, plan, or contract for
249 non-investigational treatments; or

250 (F) Adverse events during treatment are divided into those that reflect the natural history
251 of the disease, or its progression, and those that are unique in the experimental treatment. Costs
252 for the former are the responsibility of the payor, and costs for the later are the responsibility of
253 the sponsor. The sponsor shall hold harmless any payor for any losses and injuries sustained by
254 any member as a result of his or her participation in the clinical trial.

255 "Person" means any individual, corporation, association, partnership, proprietor, agent,
256 assignee or entity.

257 "Personal responsibility contract" means a written agreement entered into by the
258 department and a beneficiary for purposes of participation in the West Virginia Works Program;

259 "Premium" means a monthly fee paid by an eligible buy-in participant to continue
260 participation in the program.

261 "Program" means the West Virginia Children's Health Insurance Program.

262 "Provider" means any individual or entity furnishing goods or services pursuant to the
263 programs of the Department of Human Services.

264 "Public assistance" means any type of assistance offered by the department pursuant to

265 this article, chapter forty-eight of this code and chapter forty-nine of this code.

266 “Reasonable funeral service expenses” means expenses for services provided by a
267 funeral director for the disposition of human remains.

268 "Recipient" means a person who applies for, and receives assistance from, the
269 Department of Human Services.

270 "Regional long-term care ombudsman" means any paid staff of a designated regional
271 long-term care ombudsman program who has obtained appropriate certification from the bureau
272 for senior services and meets the qualifications set forth in §16-5I-7 of this code.

273 "Secretary" means the Secretary of the Department of Human Services.

274 "Services" means nursing facility services, home and community-based services, and
275 related hospital and prescription drug services for which an individual received Medicaid medical
276 assistance.

277 "State assistance" means all forms of aid, care, assistance, services and general relief
278 made possible solely out of state, county and private appropriations to, or on behalf of, indigent
279 persons.

280 “State long-term care ombudsman” means an individual who meets the qualifications of
281 chapter 16 of this code who is employed by the state Bureau for Senior Services to implement
282 the state long-term care ombudsman program.

283 "State Medicaid agency" means the Bureau of Medical Services within the department
284 that is the federally designated single state agency charged with administration and supervision
285 of the state Medicaid program.

286 "Subsidized employment" means employment with earnings provided by an employer who
287 receives a subsidy from the department for the creation and maintenance of the employment
288 position.

289 "Support services" includes, but is not limited to, the following services: Child care;
290 Medicaid; transportation assistance; information and referral; resource development services

291 which includes assisting families to receive child support and supplemental security income;
292 family support services which includes parenting, budgeting and family planning; relocation
293 assistance; and mentoring services.

294 "Temporary assistance for needy families" is the federal program funded under Part A,
295 Title IV of the Social Security Act, codified at 42 U.S.C. §601, et. seq.

296 "Third-party" means an individual or entity that is alleged to be liable to pay all or part of
297 the costs of a recipient's medical treatment and medical-related services for personal injury,
298 disease, illness or disability, as well as any entity including, but not limited to, a business
299 organization, health service organization, insurer, or public or private agency acting by, or on
300 behalf of, the allegedly liable third-party.

301 "Transitional assistance" may include medical assistance, food stamp assistance, child
302 care and supportive services as defined by the secretary and as funding permits.

303 "Two-parent family" means two parents with a common child residing in the same
304 household and included in a common West Virginia Works grant payment or, two parents with a
305 common child residing in the same home and one or both of the parents are "work eligible
306 individuals", as that term is defined in this section, but are excluded from the West Virginia Works
307 payments unless the exclusion is due to an exemption as provided in this article.

308 "Unit" means the Medicaid Fraud Control Unit established pursuant to this chapter.

309 "Unsubsidized employment" means employment with earnings provided by an employer
310 who does not receive a subsidy from the department for the creation and maintenance of the
311 employment position.

312 "Vocational-educational training" means organized educational programs, not to exceed
313 twelve months for any individual, that are directly related to the preparation of individuals for
314 employment in current or emerging occupations requiring training other than a baccalaureate or
315 advance degree.

316 "Work" means unsubsidized employment, subsidized employment, work experience,

317 community or personal development and education and training.

318 "Work eligible individual" means an adult or minor child head-of-household receiving
319 assistance under the West Virginia Works Program or a nonrecipient parent living with a child
320 receiving the assistance.

321 "Work experience" means a publicly assisted work activity, including work associated with
322 the refurbishing of publicly assisted housing, performed in return for program benefits that provide
323 general skills, training, knowledge and work habits necessary to obtain employment. This activity
324 must be supervised daily and on an ongoing basis by an employer, work site sponsor or other
325 responsible party.

PART TWO. GENERAL PROVISIONS.

§9-3-201. Creation of department.

1 (a) The Legislature creates the Department of Human Services. In creating this
2 department, the Legislature intends to continue on a reorganized basis state provided human
3 services functions and behavioral health services previously administered by the Department of
4 Health and Human Resources and its predecessor agency. The purpose of this agency is to
5 provide public assistance and human services to eligible persons. These changes shall become
6 effective July 1, 2019.

7 (b) The rules of the Secretary of the Department of Health and Human Resources related
8 to the Bureau for Medical Services, the Children's Health Insurance Program and any other
9 provisions of this article shall remain in effect until they are amended or rescinded by the Secretary
10 of the Department of Human Services.

§9-3-202. Department agencies.

1 The Department of Human Services shall consist of the Bureau for Economic Assistance
2 set forth in this chapter, the Bureau for Child and Family Services set forth in this chapter, the
3 Bureau for Behavioral Health set forth in in of chapter twenty-seven of this code, the Bureau for

4 Medical Services as set forth in §9-3-1 et seq. of this code and the Children's Health Insurance
5 Program as set forth in §9-3-1 et seq. of this code. All functions, powers, duties, employees and
6 responsibilities of these entities shall transfer to the Department of Human Services on the first
7 day of July, 2019.

PART. THREE. ORGANIZATION AND POWERS AND DUTIES OF THE DEPARTMENT
AND SECRETARY.

§9-3-301. Responsibility and powers of department; information and data to be supplied
by other agencies.

1 (a) The department is charged with administering state programs which provide medical
2 and public assistance, behavioral health services and child and family services. This shall include:

3 (1) All powers, not inconsistent with state law, as may be necessary for this state to obtain
4 maximum federal funds made available for federal-state public assistance within whatever limits
5 or restrictions may be imposed by, or may exist by reason of the amount of state funds
6 appropriated for such public assistance under, the state's budget act and supplementary
7 appropriation acts;

8 (2) All powers, not inconsistent with state law, as may be necessary for the disbursement
9 and distribution of medical and public assistance to those persons qualified therefor in as prompt,
10 fair, orderly, efficient and economical manner as possible;

11 (3) Provide behavioral health services as set forth in chapter twenty-seven of this code;
12 and

13 (4) Provide child and family welfare services as set forth in chapter forty-nine of this code.

14 (b) Notwithstanding any other provision of this code to the contrary, each department,
15 agency, commission or board of state government shall make available to the department such
16 information and data as each department, agency, commission or board may collect about any
17 applicant for, or recipient of, any type of federal or state public assistance upon such terms as

18 may be prescribed by the Governor, if the information and data would be relevant in determining
19 whether the applicant or recipient is qualified or eligible for any public assistance, and after the
20 information and data have been obtained by the department, the same shall be used only by the
21 department in carrying out and discharging its powers, duties and responsibilities.

§9-3-302. Secretary of the department: qualifications.

1 (a) The administrative head of the department is the secretary, who shall be appointed
2 and compensated, as provided by §6-7-1 et seq. of this code.

3 (b) Before entering upon the duties of his or her office, the secretary shall take and
4 subscribe to the oath of office prescribed by section five, article four of the state Constitution.

5 (c) The secretary may not be a candidate for, or hold, any other public office or public
6 employment or be a member or officer of any political party committee, or serve as an election
7 official, or engage in any political activity, other than to vote, in an election. Any violation by the
8 secretary of the provisions of this subsection shall automatically vacate his or her appointment as
9 secretary.

§9-3-303. Organization of department.

1 (a) The department shall consist of the Bureau for Economic Assistance; the Bureau for
2 Behaviorial Health, the Bureau for Child and Family Services, the Bureau of Medical Services and
3 the West Virginia Children's Health Insurance Program.

4 (b) Consistent with the provisions of §5F-2-1 of this code, the secretary may organize the
5 department into such other offices, divisions, agencies and other administrative units as he or she
6 sees as necessary.

§9-3-304. Acceptance of federal-state assistance and federal assistance.

1 The state and the department assent to the purposes of federal-state assistance and
2 federal assistance, accepts federal appropriations and other forms of assistance made under or
3 pursuant thereto, and authorizes the receipt of such appropriations into the state Treasury and
4 the receipt of other forms of assistance by the department for expenditure, disbursement, and

5 distribution by the department in accordance with the provisions of this chapter and the conditions
6 imposed by applicable federal laws, rules and regulations.

§9-3-305. Powers and duties of secretary.

1 Within limits of state appropriations and federal grants and subject to provisions of state
2 and federal laws and regulations, the secretary, in addition to all other powers, duties and
3 responsibilities granted and assigned to that office in this chapter and elsewhere by law, is
4 authorized to:

5 (1) Promulgate, amend, revise and rescind department rules respecting the organization
6 and government of the department and the execution and administration of those powers, duties
7 and responsibilities granted and assigned by this chapter and elsewhere by law to the department
8 and the secretary.

9 (2) Promulgate, amend, revise and rescind department rules and regulations respecting
10 qualifications for receiving the different classes of public assistance consistent with, or permitted
11 by, federal laws, rules and policies, but not inconsistent with state law.

12 (3) For the protection of applicants and recipients of public and medical assistance, child
13 and family assistance and behavioral health services, the department shall be required to
14 establish legislative rules governing the custody, use and preservation of the records, papers,
15 files and communications of the department.

16 (4) Obtain by purchase or lease grounds, buildings, office or other space, equipment,
17 facilities and services as may be necessary for the execution and administration of those powers,
18 duties and responsibilities granted and assigned by this chapter and elsewhere by law to the
19 department and the secretary.

20 (5) Sign and execute in the name of the state by the Department of Human Services any
21 contract or agreement with the federal government or its agencies, other states, political
22 subdivisions of this state, corporations, associations, partnerships or individuals: *Provided*, That
23 the provisions of §5A-3-1 *et seq.* of this code are followed.

24 (6) Sign and execute a contract to implement professional health care, managed care,
25 actuarial and health care-related monitoring, quality review/utilization, claims processing and
26 independent professional consultant contracts for the Medicaid program: *Provided*, That the
27 provisions of §5A-3-1 *et seq.* of this code are followed: *Provided, however*, That a contract
28 awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains
29 in full force and effect and the secretary retains sole authority to review, approve and issue
30 changes to contracts issued under the former purchasing process, and is responsible for
31 challenges, disputes, protests and legal actions related to such contracts.

32 (7) Establish such special funds as may be required by the federal Social Security Act, as
33 amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of
34 the benefits and provisions thereof relating to the federal-state assistance and federal assistance
35 programs administered by the department and to make payments into and disbursements out of
36 any such special fund or funds in accordance with the requirements of the federal Social Security
37 Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state
38 law and the objects and purposes of this chapter. In addition, the Department of Human Services,
39 through the secretary, is hereby authorized to accept any and all gifts or grants, whether in money,
40 land, services or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate
41 fund and expended solely for the purpose of public assistance programs. No part of this special
42 fund shall revert to the General Revenue Funds of this state. No expenses incurred pursuant to
43 this special fund shall be a charged against the General Funds of this state.

44 (8) Provide at department expense a program of continuing professional, technical and
45 specialized instruction for the personnel of the department.

46 (9) Pay from available funds all or part of the reasonable expenses incurred by a person
47 newly employed by the department in moving his household furniture, effects and immediate
48 family from his or her place of residence in this state to his or her place of employment in this
49 state; and to pay from available funds all or part of the reasonable expenses incurred by a

50 department employee in moving his or her household furniture, effects and immediate family as
51 a result of a reassignment of the employee which is considered desirable, advantageous to and
52 in the best interests of the state, but no part of the moving expenses of any one such employee
53 shall be paid more frequently than once in twelve months or for any movement other than from
54 one place of employment in this state to another place of employment in this state.

55 (10) Establish a program to provide reimbursement to employees of the department whose
56 items of personal property, as defined by the department by policy, are damaged during the
57 course of employment or other work-related activity as a result of aggressive behavior by a client
58 or patient receiving services from the department: *Provided*, That such reimbursement is limited
59 to a maximum amount of \$250.00 per claim.

60 (11) Prepare and submit state plans which will meet the requirements of federal laws,
61 rules governing federal-state assistance and federal assistance and which are not inconsistent
62 with state law.

63 (12) Provide by rules review and appeal procedures within the department as may be
64 required by applicable federal laws and rules respecting state assistance, federal-state assistance
65 and federal assistance and as will provide applicants for, and recipients of all, classes of
66 assistance an opportunity to be heard by the Board of Review as set forth in this chapter, or a
67 member thereof or individuals designated by the board, upon claims involving denial, reduction,
68 closure, delay or other action or inaction pertaining to public assistance.

69 (13) Provide by rules, consistent with requirements of applicable federal laws and rules,
70 application forms and application procedures for the various classes of public assistance.

71 (14) Provide locations for making applications for the various classes of public assistance:
72 *Provided*, That the secretary may accomplish this through the use of memorandums of
73 understanding with other entities of state government which provide services locations throughout
74 the state.

75 (15) Provide a citizen or group of citizens an opportunity to file objections and to be heard

76 upon objections to the grant of any class of public assistance.

77 (16) Delegate to the personnel of the department all powers and duties vested in the
78 secretary, except the power and authority to sign contracts and agreements.

79 (17) Provide a citizen or group of citizens an opportunity to file objections and to be heard
80 upon objections to the grant of any class of medical assistance.

81 (18) (A) Develop caseload standards based on the actual duties of employees in each
82 program area of the department and may take into consideration existing professional caseload
83 standards. Standards shall be reasonable and achievable.

84 (B) The caseload standards which are developed establishing minimum and maximum
85 caseloads shall be advisory for the department in the hiring of staff and in individual caseload
86 assignments, and may be used as a basis of the departments personal services budget request
87 to the governor and the Legislature.

88 (C) As used in this subsection "caseload standards" means a measurable numerical
89 minimum and maximum workload which an employee can reasonably be expected to perform in
90 a normal workday or workweek, based on the number, variety and complexity of cases handled
91 or number of different job functions performed and, "professional caseload standards" means
92 standards established by national standard setting authorities, when they exist, or caseload
93 standards used in other states which have similar job titles.

94 (19) Have authority over early intervention services for children with developmental
95 disabilities as set forth in §16-5K-1 et seq. of this code.

96 (20) Have authority over the James "Tiger" Morton catastrophic illness fund as set out in
97 §16-5Q-1 et seq. of this code;

98 (21) (A) Serve, by certified mail or personal service, an administrative subpoena on any
99 person, corporation, partnership, financial institution, labor organization or state agency for an
100 appearance or for production of documents necessary for administration of the public assistance
101 programs of the department. In the case of disobedience to the subpoena, the secretary may

102 invoke the aid of any circuit court in requiring the appearance or production of records and
103 documents.

104 (B) Apply to the circuit court of any county in which any hearing is to be held, or the circuit
105 court in which the subpoena or subpoena duces tecum is to be served, or the judge of either such
106 court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel the
107 attendance of witnesses or the production of documents, before any hearing or administrative
108 tribunal convened to consider suspension or termination of any person or corporation from
109 providing services under the public assistance programs administered by the department.

110 (22) Make such reports in such form and containing such information as may be required
111 by applicable federal laws and rules respecting federal-state assistance and federal assistance.

112 (23) Invoke any legal, equitable or special remedies for the enforcement of the provisions
113 of this article.

§9-3-306. Attorney General and prosecuting attorneys to render legal services to secretary and commissioner.

1 The Attorney General, the Attorney General's assistants, and the prosecuting attorneys of
2 the various counties shall render to the secretary and the commissioners as set forth in this article,
3 without additional compensation, the legal services as the secretary and the commissioners shall
4 require of them in the discharge of their duties. this section does not prohibit the department from
5 developing plans for cooperation with courts, prosecuting attorneys, and other law-enforcement
6 officials in a manner as to permit the state and its citizens to obtain maximum fiscal benefits under
7 federal laws, rules and regulations.

PART FOUR. BUREAU FOR CHILD AND FAMILY SERVICES.

§9-3-401. Creation of the Bureau for Child and Family Services.

1 Effective the first day of July 2019, The Bureau for Child and Family Services is created
2 and continued within the Department of Human Services.

§9-3-402. Appointment of commissioner; qualifications; compensation.

1 (a) There is hereby created the position of commissioner. The commissioner shall:

2 (1) Be appointed by the Governor with advice and consent of the Senate;

3 (2) Report directly to the secretary;

4 (3) Serve at the will and pleasure of the Governor;

5 (4) Serve on a full-time basis and shall not engage in any other profession or occupation,

6 including the holding of a political office in the state either by election or appointment, while serving
7 as commissioner; and

8 (5) Have an appropriate educational level and have reasonable administrative experience,
9 possess management skills and have knowledge of insurance, specifically publicly provided
10 insurance.

11 (b) Before entering upon the discharge of the duties as commissioner, the commissioner
12 shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution
13 of West Virginia.

14 (c) The commissioner shall receive:

15 (1) A reasonable and competitive compensation package to be established by the
16 secretary; and

17 (2) Reimbursement for expenses under the standard state travel regulations.

§9-3-403. Powers and duties of the commissioner.

1 (a) In addition to the powers and duties set forth in any other provision of this code, the
2 commissioner has the following powers and duties:

3 (1) To develop and maintain a state plan which:

4 (A) Sets forth needs of the state in providing child and family services to person who
5 qualify;

6 (B) Sets forth goals and objectives for meeting those needs; and

7 (C) Contains plans of operation for achieving the stated goals and objectives, including

8 organizational structure; and statement of requirements in personnel funds and authority for
9 achieving the goals and objectives.

10 (2) To appoint deputies and assistants to supervise the bureau's programs and such other
11 assistants and employees as may be necessary for the efficient operation of the bureau and all
12 its programs.

13 (3) To delegate to any of his or her appointees, assistants or employees all powers and
14 duties vested in the commissioner, including the power to execute contracts and agreements in
15 the name of the bureau as provided in this article. The commissioner shall be responsible for the
16 acts of such appointees, assistants and employees.

17 (4) To make periodic reports to the secretary, Governor and to the Legislature as required
18 by this chapter.

19 (b) The commissioner is authorized and empowered to accept and use for the benefit of
20 the state programs any gift or devise of any property or thing which lawfully may be given. Any
21 gift or devise of any property or thing which lawfully may be given and whatever profit may arise
22 from its use or investment shall be deposited in a special revenue fund with the State Treasurer,
23 and shall be used only as specified by the donor or donors.

§9-3-404. Organization and employees.

1 (a) The commissioner shall organize the work of the bureau in such offices or other
2 organizational units as he or she may determine to be necessary for effective and efficient
3 operation.

4 (b) The commissioner shall employ a sufficient number of employees so as to provide for
5 the effective and efficient operation of the bureau.

6 (c) The secretary may transfer employees and resources of the department to the bureau
7 as may be necessary to fulfill the duties and responsibilities of the bureau pursuant to this chapter.
8 The secretary may not transfer employees of other divisions and agencies within the department
9 to the bureau without a prior finding that the office or position held by the employee may be

10 eliminated and until the office or position is, in fact, eliminated.

11 (d) The commissioner, if he or she deems such action necessary, may hire legal counsel
12 for the bureau, notwithstanding the provisions of §5-3-1 of this code or any other code provision
13 to the contrary, or may request the Attorney General to appoint counsel who shall perform such
14 duties as may be required by the bureau. The Attorney General, in pursuance of such request,
15 may select and appoint counsel to serve during the will and pleasure of the Attorney General, and
16 shall be paid out of any funds allocated and appropriated to the bureau.

17 (e) The commissioner may employ such staff or employees as may be necessary to
18 administer and enforce this chapter.

§9-3-405. Supervisory responsibilities of the commissioner.

1 The commissioner shall have control and supervision of the bureau and shall be
2 responsible for the work of each of its organizational units. Each organizational unit shall be
3 headed by an employee of the bureau appointed by the commissioner who shall be responsible
4 to the commissioner for the work of his or her organizational unit.

§9-3-406. General duties and powers of the Bureau for Child and Family Services.

1 (a) In carrying out the policies and procedures for enforcing the provisions of this chapter,
2 the bureau shall have the following power and authority:

3 (1) To establish policies and procedures for governing the administration of the bureau
4 and providing child and family services to the citizens of this state as set forth in this code;

5 (2) To formulate standard fiscal procedures and make recommendations for improvement
6 of the Bureau;

7 (3) To provide for a procedure for supplies and equipment for the bureau;

8 (4) To act as a liaison with other state entities and private groups with an interest in
9 services to children and families;

10 (5) To offer child and family services to those who meet the eligibility standards set by the
11 bureau and the federal government through laws, rules and regulations; and

12 (6) To perform any other duties assigned to the bureau by the secretary.

13 (b) To operate and oversee all child welfare programs as set forth in chapter forty-nine of
14 this code, including but not limited to child care center licensing, early childhood education, child
15 protective series and any other child welfare service.

16 (c) To operate and oversee a program of social services for adults as set forth in this
17 chapter.

§9-3-407. Continuation of present aid; contributions by counties.

1 (a) Except as otherwise provided in this chapter, aid or assistance rendered under existing
2 law shall not be deemed to be discontinued.

3 (b) County commissions may contribute in-kind services or money into a special fund of
4 the department to expand the general assistance programs for citizens of its county. No part of
5 this fund shall revert to the general revenue of the state.

§9-3-408. Application for and granting of federal-state or federal assistance.

1 Any person domiciled in this state, who shall make, or have made in his or her behalf, an
2 application therefor and who is otherwise in all respects qualified to receive the same, shall be
3 granted federal-state assistance or federal assistance in such form and amount, to such extent,
4 and for such period, as authorized by applicable federal and state laws, rules and regulations and
5 as determined by the bureau in accordance with such laws, rules and regulations and within limits
6 of available funds.

§9-3-409. Application for and granting of state assistance.

1 Any indigent person domiciled in this state, who shall make, or have made in his or her
2 behalf, an application therefor and who is otherwise in all respects qualified to receive the same,
3 shall be granted state assistance in such form and amount, to such extent, and for such period,
4 as authorized by applicable state laws, rules and regulations of the bureau and as determined by
5 the bureau in accordance with such laws, rules and regulations and within limits of available funds.

§9-3-410. Making application, investigation and grant.

1 (a) All persons wishing to make application for child and family services and assistance
2 shall have an opportunity to do so. Upon receipt of an application for child and family services
3 and assistance, the bureau shall make such investigation as may be necessary and as the
4 exigency of the case will permit to determine the eligibility of the applicant for, and the form,
5 amount, extent, and period of, such assistance.

6 (b) When the bureau approves an application for child and family services and assistance,
7 it shall fix the amount, form, extent and period of such assistance in accordance with applicable
8 federal and state laws, rules and regulations and within the limits of available funds.

§9-3-411. Penalties for false statements, etc.

1 Any person who obtains, or attempts to obtain, or aids or abets an applicant or recipient
2 in obtaining, or attempting to obtain, by means of a willfully false statement or misrepresentation
3 or by impersonation of any other fraudulent device:

4 (1) Any assistance to which the applicant or recipient is not entitled; or

5 (2) Any assistance in excess of that to which the applicant or recipient is justly entitled;
6 shall upon conviction be punished as follows:

7 (A) If the aggregate value of all funds or other benefits obtained or attempted to be
8 obtained shall be \$500 or less, the person so convicted shall be guilty of a misdemeanor and,
9 shall be fined not more than \$1,000 or confined in jail not exceeding one year; or

10 (B) If the aggregate value of all funds or other benefits obtained or attempted to be
11 obtained shall exceed \$500, the person so convicted shall be guilty of a felony and, shall be fined
12 not more than \$5,000 or confined in the penitentiary not less than one year nor more than five
13 years.

§9-3-412. Assignment of support obligations.

1 (a) Any recipient of financial assistance under the program of state and federal assistance
2 established by Title IV of the federal Social Security Act of 1965, as amended, or any successor
3 act thereto, shall, as a condition of receiving assistance funded pursuant to this article assign to

4 the Department of Human Services any right the family member may have, on behalf of the family
5 member or of any other person for whom the family member has applied for, or is receiving such
6 assistance, to support from any other person, not exceeding the total amount of assistance so
7 paid to the family, which accrues during the period that the family receives assistance pursuant
8 to the program.

9 (b) Each applicant for assistance subject to the assignment established in this section
10 shall, during the application process, be informed in writing of the nature of the assignment.

11 (c) Any payment of federal and state assistance made to, or for the benefit of, any child or
12 children or the caretaker of a child or children creates a debt due and owing to the Department of
13 Human Services by the person or persons responsible for the support and maintenance of the
14 child, children or caretaker in an amount equal to the amount of assistance money paid: *Provided,*
15 That the debt is limited by the amount established in any court order or final decree of divorce if
16 the amount in the order or decree is less than the amount of assistance paid.

17 (d) The assignment pursuant to this section shall subrogate the Department of Human
18 Services to the rights of the child, children or caretaker to the prosecution or maintenance of any
19 action or procedure existing under law providing a remedy whereby the Department of Human
20 Services may be reimbursed for moneys expended on behalf of the child, children or caretaker.
21 The Department of Human Services shall further be subrogated to the debt created by any order
22 or decree awarding support and maintenance to, or for the benefit of, any child, children or
23 caretaker included within the assignment pursuant to this section and shall be empowered to
24 receive money judgments and endorse any check, draft, note or other negotiable document in
25 payment thereof.

26 (e) The assignment created pursuant to this section shall be released upon closure of the
27 assistance case and the termination of assistance payments except for support and maintenance
28 obligations accrued and owing at the time of closure which are necessary to reimburse the
29 department for any balance of assistance payments made.

30 (f) The Department of Human Services may, at the election of the recipient, continue to
31 receive support and maintenance moneys on behalf of the recipient following closure of the
32 assistance case and shall distribute the moneys to the caretaker, child or children.

§9-3-413. Authority to examine witnesses, administer oaths and take affidavits.

1 The secretary, the commissioner and employees of the department may administer oaths,
2 examine witnesses and take and certify affidavits in any matter or thing pertaining to the business
3 of the department.

§9-3-414. Authority to subpoena witnesses and documents when investigating the
provision of assistance programs.

1 The secretary and the commissioner and every duly appointed hearing examiner may
2 apply, on behalf of any party, to the circuit court of the county in which a hearing is to be held, or
3 the circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of
4 either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel
5 the attendance of witnesses or the production of documents, before any hearing or administrative
6 tribunal convened to consider suspension or termination of any person or corporation from
7 providing services under the public assistance programs administered by the department. The
8 application for a subpoena duces tecum shall state with particularity any papers or documents
9 requested and upon hearing, the applicant or party shall notify the court or judge, as the case
10 may be, of the necessity therefor in such hearing. The court or judge thereof, prior to issuing the
11 requested subpoena or subpoena duces tecum, may make any order which justice requires to
12 protect a party or person from annoyance, embarrassment, oppression or undue burden or
13 expense. The party who applies for the subpoena or subpoena duces tecum shall pay the sheriff's
14 fees required for service of these documents.

PART FIVE. OFFICE OF MATERNAL, CHILD AND FAMILY HEALTH.

§9-3-501. Creation of office.

1 (a) There is established and continued within the Department of Human Services, Bureau
2 for Child and Families, the Office of Maternal, Child and Family Health.

3 (b) The office shall develop a plan for a comprehensive system and uniform approach to
4 any screening conducted by physicians and midwives to discover at-risk and high-risk
5 pregnancies and to offer better health outcomes for women and their families.

6 (c) The office shall provide for prenatal examination as set forth in this article and for a
7 birth score program and newborn testing as set forth in this article and shall also include programs
8 federally funded pursuant to Title V of Maternal and Child Health Block Grant Program.

§9-3-502. Compulsory serologic test.

1 Every pregnant woman who is resident in West Virginia, shall have a blood sample taken
2 and submitted to the West Virginia State Hygienic Laboratory or other laboratory approved by the
3 department. The laboratory shall perform a standard serologic test for syphilis. Any standard
4 laboratory test for syphilis approved by the secretary shall be considered to be such a standard
5 serologic test.

§9-3-503. Attending physician to obtain blood specimen.

1 Every physician providing services to a pregnant woman in West Virginia shall, as soon
2 as he or she is engaged to attend a woman and has reasonable grounds for suspecting that
3 pregnancy exists, acquaint such woman with the provisions of this article and take or cause to be
4 taken a specimen of blood from such woman. This specimen shall be submitted to the state
5 hygienic laboratory or other laboratory approved by the department as required by this article. If
6 the woman is in a stage of gestation or labor at the time that the diagnosis of pregnancy is made,
7 which may make it inadvisable to obtain the specimen, the specimen of blood shall be obtained
8 within ten days following delivery.

9 The state hygienic laboratory shall perform the serological tests required by law on all
10 blood specimens taken from pregnant women by physicians for examination. These tests shall
11 be performed without charge.

12 Upon request it shall be the duty of local health officers to draw blood specimens from
13 pregnant women for performing thereon a serologic test for syphilis. This service shall be
14 performed without charge.

15 In those areas where the services of a district or county health officer are not available,
16 the department shall assume the responsibility of obtaining the required blood specimens without
17 any charge to the pregnant women.

§9-3-504. Identification of specimen; report.

1 Any physician who takes or causes to be taken from a woman in pregnancy or suspected
2 pregnancy a blood test for syphilis shall identify such specimen as being from a pregnant woman,
3 and the laboratory shall provide a report in triplicate on forms prepared and furnished by the
4 department showing the results of such tests.

5 The original of each such report shall be sent at once to the physician submitting the
6 specimen, a duplicate shall be forwarded to the department during the week that the test was
7 performed, and the triplicate shall be retained by the laboratory for its files.

8 All laboratory reports shall be confidential and shall not be open to public inspection.

9 The laboratory test for syphilis in compliance with this article shall be performed free of
10 charge by the state hygienic laboratory on the application of any municipal or county health officer
11 or other physician, or any other person permitted by law to secure such specimens.

§9-3-505. Notation on birth certificate.

1 Every physician required to report births and stillbirths, shall state on each birth certificate
2 or stillbirth certificate, as the case may be, whether a blood test for syphilis was performed during
3 such pregnancy upon a specimen of blood taken from the woman who bore the child for which
4 the birth or stillbirth certificate is filed.

5 If such test was made, the physician shall state on the certificate the name of the test
6 used, the date the test was performed and the name of the laboratory making the test; if not made,
7 the physician filing the certificate shall state the reason or reasons why such test was not

8 performed. In no event shall the result of the test be stated on the birth or stillbirth certificate.

§9-3-506. Penalties.

1 Any physician or representative of a laboratory, making such examinations or tests as are
2 required above, or filing such birth or stillbirth certificates, who shall knowingly misrepresent any
3 of the facts called for in the laboratory reports or birth or stillbirth certificate, or who otherwise
4 knowingly and wilfully shall violate any provision above, shall be guilty of a misdemeanor and,
5 upon conviction thereof shall be subject to a fine of not less than \$10 nor more than \$50.

§9-3-507. Birth score program established.

1 (a) The department shall establish and implement a birth score program designed to
2 combat postneonatal mortality and to detect debilitating conditions and possible developmental
3 delays in newborn infants in the state.

4 (b) The purpose and goals of the birth score program are to reduce the incidence of
5 postneonatal mortality and disease by:

6 (1) Identifying newborns at greatest risk for death between one month and one year of
7 age; and

8 (2) Linking these infants with physicians for close follow-up during the first year of life.

9 (c) The birth score of a newborn infant shall be determined pursuant to the program
10 established by the department by trained hospital or birthing facility personnel immediately after
11 the infant is delivered.

§9-3-508. Determination of birth score; referral to physician.

1 Any hospital or birthing facility in which an infant is born, any physician attending the infant,
2 or any other person attending the infant if not under the care of a physician, shall require and
3 ensure that a birth score is determined for the newborn infant in order to assess the level of risk
4 for postneonatal mortality, debilitating conditions and developmental delays.

5 No birth score shall be determined or birth score program implemented if the parent or
6 guardian objects to the birth score program on the grounds that it conflicts with their religious

7 tenets and practices.

8 Any infant delivered at a nonlicensed facility, including, but not limited to, home births,
9 shall have a birth score determined by the child's primary physician within ten days of birth, subject
10 to the exception set forth in this section.

11 When any infant receives a high risk birth score, as determined by the program established
12 by this article, the parents shall be informed of the birth score and its implications, and then linked
13 with a local primary care physician for a recommended six visits in the first six months of the
14 infant's life.

15 The department, in cooperation with other state departments and agencies, may provide
16 necessary medical and other referrals for services related to infants determined to be at high risk
17 for postneonatal mortality and other debilitating conditions and developmental delays.

§9-3-509. Newborn testing program established.

1 The department is authorized to establish and carry out a program designed to conduct
2 tests on newborns in this state to combat intellectual disability or other severe health hazards in
3 our state's population due to phenylketonuria, galactosemia, hypothyroidism, and certain other
4 diseases specified by the secretary and in §9-3-510 of this code.

5 The department shall establish and maintain facilities at its state hygienic laboratory for
6 testing specimens for the detection of phenylketonuria, galactosemia, hypothyroidism, and certain
7 other diseases specified by the secretary.

8 Tests shall be made by such laboratory of specimens upon request by physicians, hospital
9 medical personnel and other individuals attending newborn infants. The secretary is authorized
10 to establish additional laboratories throughout the state to perform tests for the detection of
11 phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the
12 secretary.

§9-3-510. Tests for diseases specified by the secretary; reports; assistance to afflicted
children; penalties.

1 The hospital or birthing center in which an infant is born, the parents or legal guardians,
2 the physician attending a newborn child, or any person attending a newborn child not under the
3 care of a physician shall require and ensure that each such child be tested for phenylketonuria,
4 galactosemia, hypothyroidism, sickle cell anemia and certain other diseases specified by the
5 secretary. The department shall also require testing for congenital adrenal hyperplasia, cystic
6 fibrosis and biotinidase deficiency.

7 The department shall also require testing for isovaleric acidemia, glutaric acidemia type I,
8 3-Hydroxy-3-methylglutaric aciduria, multiple carboxylase deficiency, methylmalonic acidemia-
9 mutase deficiency form, 3-methylcrotonyl-CoA carboxylase deficiency, methylmalonic acidemia,
10 Cbl A and Cbl B forms, propionic acidemia, beta-ketothiolase deficiency, medium-chain acyl-CoA
11 dehydrogenase deficiency, very long-chain acyl-CoA dehydrogenase deficiency, long-chain
12 hydroxyacyl-CoA dehydrogenase deficiency, trifunctional protein deficiency, carnitine uptake
13 defeat, maple syrup urine disease, homocystinuria, citrullinemia type I, argininosuccinate
14 acidemia, tyrosinemia type I, hemoglobin S/Beta-thalassemia, sickle C disease and hearing
15 deficiency.

16 Any person violating the provisions of this section and §9-3-509 of this code is guilty of a
17 misdemeanor, and, upon conviction thereof, shall be fined not less than \$25 nor more than \$50.

18 Violation of each such provision is considered a separate offense.

§9-3-511. Pulse oximetry newborn testing.

1 (a) The department shall also require each birthing facility which they license to perform a
2 pulse oximetry screening on every newborn in its care, when the baby is twenty-four to forty-eight
3 hours of age, or as late as possible if the baby is to be discharged from the hospital before he or
4 she is twenty-four hours of age.

5 (b) As used in this section, "birthing facility" means an inpatient or ambulatory health care
6 facility licensed by the department that provides birthing and newborn care services.

§9-3-512. Reporting requirements.

1 A positive result on any test specified in this article, or a positive result for any other
2 diseases specified by the department shall be promptly reported to the department by the director
3 of the laboratory performing such test.

§9-3-513. Testing required on newborns for hearing loss.

1 The physician or midwife in attendance at, or present immediately after, a live birth shall
2 perform, or cause to be performed, a test for hearing loss in the infant unless the infant's parents
3 refuse to have the testing performed pursuant to the provisions of §9-3-514(d) of this code.

4 For any infant delivered at a nonlicensed facility, including home births, the physician or
5 other health care provider shall inform the parents of the need to obtain testing within the first
6 month of life.

7 The secretary shall prescribe the test or tests to be administered in accordance with this
8 article.

§9-3-514. Payment for testing and screening.

1 (a) All testing and screening required pursuant to this article shall be a covered benefit
2 reimbursable by all health insurers except for health insurers that offer only supplemental
3 coverage policies or policies which cover only specified diseases. All policies issued pursuant to
4 §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., and §33-25A15-1 et seq. of this code shall
5 provide coverage for the testing required pursuant to this article.

6 (b) Newborn screenings pursuant to §9-3-510 of this code shall be considered a covered
7 benefit reimbursed to the birthing facilities by Public Employees Insurance Agency, the state
8 Children's Health Insurance Program and the Medicaid program.

9 (c) The department shall pay for testing required pursuant to this article when the newborn
10 infant is eligible for medical assistance pursuant to the provisions of §9-3-916 of this code.

11 (d) In the absence of a third-party payor, the parents of a newborn infant shall be informed
12 of the testing availability and its costs and they may refuse to have the testing performed.

13 (e) Charges for the hearing tests required pursuant to this article shall be paid by the

14 hospital or other health care facility where the infant's birth occurred.

15 (f) Nothing contained in this section may be construed to preclude the hospital or other
16 health care facility from billing the infant's parents directly.

§9-3-515. Hearing impairment testing advisory committee established.

1 There is hereby established a West Virginia Hearing Impairment Testing Advisory
2 Committee which shall advise the secretary regarding the protocol, validity, monitoring and cost
3 of hearing tests procedures required pursuant to this article.

4 This committee is to meet four times per year for the initial two years and on the call of the
5 secretary thereafter. The secretary, or his or her designee, shall serve as the chair and shall
6 appoint twelve members, one representing each of the following groups:

7 (1) A representative of the health insurance industry;

8 (2) An otolaryngologist or otologist;

9 (3) An audiologist with experience in evaluating infants;

10 (4) A neonatologist;

11 (5) A pediatrician;

12 (6) A hospital administrator;

13 (7) A speech or language pathologist;

14 (8) A teacher or administrative representative from the West Virginia School of the Deaf;

15 (9) A parent of a hearing-impaired child;

16 (10) A representative from the Office of Early Intervention Services within the department;

17 (11) A representative from the State Department of Education; and

18 (12) A representative from the West Virginia Commission for the Deaf and Hard-of-
19 Hearing.

20 (c) Members of this advisory committee shall serve without compensation.

21 (d) A majority of members constitutes a quorum for the transaction of all business.

22 (e) Members shall serve for two-year terms and may not serve for more than two

23 consecutive term.

§9-3-516. Establishment of an advisory council on maternal risk assessment.

1 (a) There is created within the Department of Health Services, Office of Maternal, Child
2 and Family Health an advisory council on maternal risk assessment to provide assistance in the
3 development of a uniform maternal risk screening tool.

4 (b) The Office of Maternal, Child and Family Health is charged with convening the advisory
5 council at least annually and providing administrative and technical assistance to the advisory
6 council as needed. The members of the advisory council shall be appointed by the Commissioner
7 of the Bureau for Children and Family Services.

8 (c) The advisory council shall be comprised of:

9 (1) At least one private provider of maternity services;

10 (2) At least one public provider of maternity services;

11 (3) One representative from each of the state's three medical schools;

12 (4) The Commissioner of the Bureau for Child and Family Services, or his or her designee;

13 (5) The Director of the Office of Maternal, Child and Family Health, or his or her designee;

14 (6) At least one representative of a tertiary care center;

15 (7) At least one representative of a facility with a level I or II obstetrical unit;

16 (8) At least one certified nurse midwife; and

17 (9) At least one allopathic or osteopathic physician who is a private provider of maternity
18 services at a facility with a level I or level II obstetrical unit.

§9-3-517. Responsibilities of the advisory council on maternal risk assessment.

1 This advisory council shall:

2 (1) Advise the Office of Maternal, Child and Family Health with respect to the operation of
3 the program;

4 (2) Offer expert advice to the Office of Maternal, Child and Family Health on the
5 development of a uniform risk screening tool and review the tool at least annually to offer

6 suggested updates based upon current medical knowledge;

7 (3) Provide comments to the Office of Maternal, Child and Family Health on any legislative
8 rules necessary for the accomplishment of any requirements of this article; and

9 (4) Develop in conjunction with the Office of Maternal, Child and Family Health a statistical
10 matrix to measure incidents of high-risk and at-risk pregnancies for planning purposes by public
11 health officials.

§9-3-518. Applicability of the screening tool.

1 Once developed, all health care providers offering maternity services shall be required to
2 utilize the uniform maternal risk screening tool in their examinations of any pregnant woman.
3 Additionally they shall notify the woman of any high-risk condition which they identify along with
4 any necessary referral and report the results to the Office of Maternal, Child and Family Health in
5 the manner provided in legislative rule.

§9-3-519. Confidentiality of screening tool.

1 (a) The uniform maternal screening tool shall be confidential and shall not be released or
2 disclosed to anyone including any state or federal agency for any reason other than data analysis
3 of high-risk and at-risk pregnancies for planning purposes by public health officials.

4 (b) Proceedings, records and opinions of the advisory council are confidential and are not
5 subject to discovery, subpoena or introduction into evidence in any civil or criminal proceeding.
6 Nothing in this subsection is to be construed to limit or restrict the right to discover or use in any
7 civil or criminal proceeding anything that is available from another source and entirely
8 independent of the proceedings of the advisory council.

9 (c) Members of the advisory council may not be questioned in any civil or criminal
10 proceeding regarding information presented in or opinions formed as a result of a meeting of the
11 panel. Nothing in this subsection may be construed to prevent a member of the advisory council
12 from testifying to information obtained independently of the panel or which is public information.

§9-3-520. Rulemaking.

1 The secretary shall propose rules for legislative approval in accordance with the provisions
2 of §29A-3-1 et seq. of this code as may be needed to establish the programs, ensure compliance
3 and assess penalties as needed to implement the provisions of this article.

4 These rules may include, at a minimum;

5 (1) Establishment of a reasonable fee schedule for tests administered pursuant to this
6 article, which shall be used to cover program costs not otherwise covered by federal grant funds
7 specifically secured for this purpose;

8 (2) Establishment of a cost-effective testing protocol based upon available technology and
9 national standards;

10 (3) Establishment of reporting and referral requirements;

11 (4) Establishment of a date for implementation of the testing protocol;

12 (5) A means for the department, in cooperation with other state agencies, and with
13 attending physicians, to provide medical, dietary and related assistance to children determined to
14 be afflicted with any disease specified in this article and certain other diseases specified by the
15 department;

16 (6) A means for payment for the testing provided for in this article;

17 (7) A uniform maternal risk screening tool to identify women at risk for a preterm birth or
18 other high-risk condition; and

19 (8) Anything further considered necessary by the secretary to implement the provisions of
20 this article.

PART SIX. SOCIAL SERVICES FOR ADULTS.

§9-3-601. Adult protective services: organization and duties.

1 (a) There is hereby established and continued within the Department of Human Services
2 a system of adult protective services.

3 (b) The department shall develop a plan for a comprehensive system of adult protective

4 services including social case work, medical and psychiatric services, home care, day care,
5 counseling, research and others to achieve the goals of this article.

6 (c) The plan offer such services as are available and appropriate in the circumstances to
7 persons who, other than for compensation, have or intend to have the actual, physical custody
8 and control of an incapacitated adult and, to such incapacitated adults or to adults who may
9 request and be entitled to such protective services.

10 (d) Except as expressly provided in this article, the department may not directly or
11 indirectly compel the acceptance of such services by any person or discriminate against a person
12 who refuses such services.

§9-3-602. Immunity from civil liability.

1 No adult protective services caseworker may be held personally liable for any professional
2 decision or action thereupon arrived at in the performance of his or her official duties as set forth
3 in this section or agency rules promulgated thereupon: *Provided*, That nothing in this subsection
4 protects any adult protective services worker from any liability arising from the operation of a
5 motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or
6 intentional misconduct.

§9-3-603. Cooperation among agencies; termination and reduction of assistance by
commissioner.

1 The secretary shall direct the coordination of the investigation of complaints of abuse or
2 neglect made pursuant to this article; and the various agencies of the department, the adult
3 protective services system, the state and regional long-term care ombudsmen, administrators of
4 nursing homes or other residential facilities, county prosecutors and any other applicable state or
5 federal agency shall cooperate among each other for the purposes of observing, reporting,
6 investigating and acting upon complaints of abuse or neglect of any incapacitated adult or facility
7 resident in this state.

§9-3-604. Action to abate abuse, neglect or emergency.

1 (a) The department or any reputable person may bring and maintain an action against any
2 person having actual care, custody or control of an incapacitated adult, for injunctive relief,
3 including a preliminary injunction, to restrain and abate any abuse or neglect of an incapacitated
4 adult or to abate an emergency situation. In any such proceeding the court shall appoint a
5 guardian ad litem, to protect the interests of the incapacitated adult, who shall not be an employee
6 of the state nor be a party to the proceeding nor be selected by, or in the employ of, any party to
7 the proceeding.

8 (b) The court may by order terminate assistance granted or paid to any person found to
9 have abused or neglected an incapacitated adult and order any such assistance to be paid to
10 another person solely for the use and benefit of such abused or neglected person, and grant such
11 other equitable relief as may be appropriate in the circumstances to restrain and abate such abuse
12 or neglect.

13 (c) That in the case of an action to abate an emergency situation, the court may grant the
14 relief authorized in §9-3-605 of this code.

§9-3-605. Emergency immediate remedial treatment; procedure.

1 (a) Whenever a circuit court shall find in an action to abate an emergency situation that:

2 (1) There is probable cause to believe that an incapacitated adult is in an emergency
3 situation; and

4 (2) That the person or persons having the immediate care, custody and control of such
5 incapacitated adult refuses to take necessary steps to alleviate such emergency;

6 (3) Or that such incapacitated adult is without the actual care, custody and control of any
7 persons;

8 It may issue an order of attachment for such incapacitated adult and direct that the peace
9 officer executing the same deliver such incapacitated adult in his or her custody to a hospital or
10 other safe place except a jail, for immediate remedial treatment to reduce or avoid the risk of
11 death or serious injury.

12 (b) In the event that an order of attachment is issued pursuant to this section, any peace
13 officer executing the order, and such employees of the department the peace officer directs to
14 accompany him or her, may enter into the place of abode to remove such incapacitated person,
15 notwithstanding the residence therein of other persons.

16 (c) If any employee or officer of the department shall by direct observation of an
17 incapacitated adult not in the immediate care, custody or control of another have reasonable
18 cause to believe that such incapacitated person is then and there in an emergency situation, then
19 such officer or employee may offer transportation to a hospital or other safe place, other than a
20 jail, to such incapacitated adult for immediate remedial treatment to reduce or avoid the risk of
21 death, or serious injury.

22 (d) Immediately upon delivery of any incapacitated person to such hospital or other safe
23 place, such officer or employee shall apply to the circuit court for and the court shall appoint, and
24 in the case of an attachment the court shall contemporaneously with its issuance appoint, a
25 guardian ad litem who shall not be an employee of the state, nor be an interested party nor be
26 selected by nor in the employ of any interested party, to represent the interests of such
27 incapacitated adult. The court shall fix a time, not later than one judicial day later, to determine if
28 such remedial treatment shall continue or such incapacitated adult should be released. A copy of
29 that attachment and notice of such hearing shall be served on any person in whose actual care,
30 custody and control such incapacitated adult is found. If further remedial treatment is required,
31 application shall be promptly made to the county commission or such other proper tribunal for
32 appropriate relief. The commitment for further remedial treatment may be continued until
33 proceedings for such appropriate relief be concluded. Application for release from such remedial
34 treatment may be made and granted at any time that the emergency ceases.

§9-3-606. Payment and termination of payment for services to incapacitated adult.

1 If any incapacitated adult:

2 (1) Requires and is granted remedial treatment for an emergency or the department

3 determines that an incapacitated adult is;

4 (2) Abused; or

5 (3) Neglected;

6 The department may pay any assistance granted for the use and benefit of such
7 incapacitated adult to the person actually providing care for such adult, and terminate payments
8 to any person alleged or shown to have abused or neglected such incapacitated adult, or to whom
9 such payments were made prior to such remedial treatment, for so long as such remedial
10 treatment continues, or until such abuse or neglect is abated, and such incapacitated adult
11 continues to be in the immediate care, custody and control of such person.

§9-3-607. Reporting procedures.

1 (a) A report of neglect or abuse of an incapacitated adult or facility resident or of an
2 emergency situation involving such an adult shall be made immediately by telephone to the
3 department's local adult protective services agency and shall be followed by a written report by
4 the complainant or the receiving agency within forty-eight hours. The department shall, upon
5 receiving any such report, take such action as may be appropriate and shall maintain a record
6 thereof. The department shall receive such telephonic reports on its twenty-four hour, seven-day-
7 a-week, toll-free number established to receive calls reporting cases of suspected or known adult
8 abuse or neglect.

9 (b) A copy of any report of abuse, neglect or emergency situation shall be immediately
10 filed with the following agencies:

11 (1) The Department of Human Services;

12 (2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary;

13 or

14 (3) In case of a death, to the appropriate medical examiner or coroner's office.

15 (c) If the person who is alleged to be abused or neglected is a resident of a nursing home
16 or other residential facility, a copy of the report shall also be filed with the state or regional

17 ombudsman and the administrator of the nursing home or facility.

18 (d) The department shall omit from such report in the first instance, the name of the person
19 making a report, when requested by such person.

20 (e) Reports of known or suspected institutional abuse or neglect of an incapacitated adult
21 or facility resident or the existence of an emergency situation in an institution, nursing home or
22 other residential facility shall be made, received and investigated in the same manner as other
23 reports provided for in this article. In the case of a report regarding an institution, nursing home
24 or residential facility, the department shall immediately cause an investigation to be conducted.

25 (f) Upon receipt of a written complaint, the department shall coordinate an investigation
26 pursuant to this article and applicable state or federal laws, rules or regulations.

§9-3-608. Mandatory reporting of incidences of abuse, neglect or emergency situation.

1 (a) If any medical, dental or mental health professional, Christian Science practitioner,
2 religious healer, social service worker, law-enforcement officer, humane officer, state or regional
3 ombudsman or any employee of any nursing home or other residential facility has reasonable
4 cause to believe that an incapacitated adult or facility resident is or has been neglected, abused
5 or placed in an emergency situation, or if such person observes an incapacitated adult or facility
6 resident being subjected to conditions that are likely to result in abuse, neglect or an emergency
7 situation, the person shall immediately report the circumstances pursuant to the provisions of §9-
8 3-610 of this code. Nothing in this article is intended to prevent individuals from reporting on their
9 own behalf.

10 (b) In addition to those persons and officials specifically required to report situations
11 involving suspected abuse or neglect of an incapacitated adult or facility resident or the existence
12 of an emergency situation, any other person may make such a report.

13 (c) The secretary shall develop a form for the filing of written complaints, as provided by
14 this article, and provide these forms to all nursing homes or other residential facilities, hospitals,
15 ombudsmen and adult protective service agencies in this state. The forms shall be designed to

16 protect the identity of the complainant, if desired, and to facilitate the prompt filing of complaints.

17 (d) The department shall develop and implement a procedure to notify any person
18 mandated to report suspected abuse and neglect of an incapacitated adult or facility resident of
19 whether an investigation into the reported suspected abuse or neglect has been initiated and
20 when the investigation is completed.

§9-3-609. Mandatory reporting suspected of animal cruelty by adult protective service workers.

1 In the event an adult protective service worker, in response to a report mandated by this
2 article, forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment,
3 he or she shall report the suspicion and the basis therefor to the county humane officer provided
4 under §7-10-1 of this code within twenty-four hours of the response to the report.

§9-3-610. Mandatory reporting to medical examiner or coroner; postmortem investigation.

1 (a) Any person or official who is required pursuant to this article to report cases of
2 suspected abuse or neglect and who has probable cause to believe that an incapacitated adult
3 or facility resident has died as a result of abuse or neglect shall report that fact to the appropriate
4 medical examiner or coroner.

5 (b) Upon the receipt of such a report, the medical examiner or coroner shall cause an
6 investigation to be made and shall report the findings to the local law-enforcement agency, the
7 local prosecuting attorney, the department's local adult protective services agency, and, if the
8 institution making a report is a hospital, nursing home or other residential facility, to the
9 administrator of the facility, the state and regional long-term care ombudsman and the Office of
10 Health Facility Licensure and Certification.

§9-3-611. Confidentiality of records.

1 (a) Except as otherwise provided in this section, all records of the department, state and
2 regional long-term care ombudsmen, nursing home or facility administrators, the Office of Health
3 Facility Licensure and certification and all protective services agencies concerning an adult or

4 facility resident under this article are confidential and may not be released, except in accordance
5 with the provisions of §9-3-610 of this code.

6 (b) Unless the adult concerned is receiving adult protective services or unless there are
7 pending proceedings with regard to the adult, the records maintained by the adult protective
8 services agency shall be destroyed thirty years following their preparation.

9 (c) Notwithstanding the provisions of subsection (a) of this section or any other provision
10 of this code to the contrary, all records concerning reports of abuse, neglect or exploitation of
11 vulnerable adults, including all records generated as a result of such reports, may be made
12 available to:

13 (1) Employees or agents of the department who need access to the records for official
14 business.

15 (2) Any law-enforcement agency investigating a report of known or suspected abuse,
16 neglect or exploitation of a vulnerable adult.

17 (3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or
18 in which the alleged abuse, neglect or exploitation occurred.

19 (4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court
20 shall, before permitting use of the records in connection with any court proceeding, review the
21 records for relevancy and materiality to the issues in the proceeding. The court may issue an
22 order to limit the examination and use of the records or any part of the record.

23 (5) A grand jury, by subpoena, upon its determination that access to the records is
24 necessary in the conduct of its official business.

25 (6) The recognized protection and advocacy agency for the disabled of the State of West
26 Virginia.

27 (7) The victim.

28 (8) The victim's legal representative, unless he or she is the subject of an investigation
29 pursuant to this article.

30 (d) Notwithstanding the provisions of subsection (a) of this section or any other provision
31 of this code to the contrary, summaries concerning substantiated investigative reports of abuse,
32 neglect or exploitation of adults may be made available to:

33 (1) Any person who the department has determined to have abused, neglected or
34 exploited the victim.

35 (2) Any appropriate official of the state or regional long-term care ombudsman
36 investigating a report of known or suspected abuse, neglect or exploitation of a vulnerable adult.

37 (3) Any person engaged in bona fide research or auditing, as defined by the department.
38 However, information identifying the subjects of the report may not be made available to the
39 researcher.

40 (4) Employees or agents of an agency of another state that has jurisdiction to investigate
41 known or suspected abuse, neglect or exploitation of vulnerable adults.

42 (5) A professional person when the information is necessary for the diagnosis and
43 treatment of, and service delivery to, a vulnerable adult.

44 (6) A department administrative hearing officer when the hearing officer determines the
45 information is necessary for the determination of an issue before the officer.

46 (e) The identity of any person reporting abuse, neglect or exploitation of a vulnerable adult
47 may not be released, without that person's written consent, to any person other than employees
48 of the department responsible for protective services or the appropriate prosecuting attorney or
49 law-enforcement agency. This subsection grants protection only for the person who reported the
50 abuse, neglect or exploitation and protects only the fact that the person is the reporter. This
51 subsection does not prohibit the subpoena of a person reporting the abuse, neglect or exploitation
52 when deemed necessary by the prosecuting attorney or the department to protect a vulnerable
53 adult who is the subject of a report, if the fact that the person made the report is not disclosed.

§9-3-612. Abrogation of privileged communications.

1 The privileged status of communications between husband and wife, and with any person

2 required to make reports pursuant to this article, except communications between an attorney
3 and his or her client, is hereby abrogated in circumstances involving suspected or known abuse
4 or neglect of an incapacitated adult or where the incapacitated adult is in a known or suspected
5 emergency situation.

§9-3-613. Reporting person's immunity from liability.

1 (a) Any person who in good faith makes or causes to be made any report permitted or
2 required by this article shall be immune from any civil or criminal liability which might otherwise
3 arise solely out of making such report.

4 (b) No nursing home may discharge or in any manner discriminate against any resident,
5 family member, legal representative or employee for the reason that he or she filed a complaint
6 or participated in any matter or proceeding stemming from the provisions of this article.

7 (c) Violation of the prohibition contained in subsection (b) of this section by a nursing home
8 or other residential facility constitutes grounds for the suspension or revocation of the license of
9 the facility, if it operates under license pursuant to this code, or other appropriate measure.

§9-3-614. Compelling production of information.

1 (a) In order to obtain information regarding the location of an adult who is the subject of
2 an allegation of abuse or neglect, the secretary of the department may serve, by certified mail,
3 personal service or facsimile, an administrative subpoena on any corporation, partnership,
4 business or organization for production of information leading to determining the location of the
5 adult. In case of disobedience to the subpoena, adult protective services may petition any circuit
6 court to require the production of information.

7 (b) In case of disobedience to the subpoena, in compelling the production of information
8 the secretary may invoke the aid of:

9 (1) The circuit court with jurisdiction over the served party, if the entity served is located in
10 this state; or

11 (2) The circuit court of the county in which the local protective services office conducting

12 the investigation is located, if the entity served is a nonresident.

13 (c) A circuit court shall not enforce an administrative subpoena unless it finds that:

14 (1) The investigation is one the division of adult protective services is authorized to make
15 and is being conducted pursuant to a legitimate purpose;

16 (2) The inquiry is relevant to that purpose;

17 (3) The inquiry is not too broad or indefinite;

18 (4) The information sought is not already in the possession of the division of adult
19 protective services; and

20 (5) Any administrative steps required by law have been followed.

21 (d) If circumstances arise where the secretary, or his or her designee, determines it
22 necessary to compel an individual to provide information regarding the location of an adult who is
23 the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek
24 a subpoena from the circuit court with jurisdiction over the individual from whom the information
25 is sought.

§9-3-615. Failure to report; penalty.

1 Any person subject to the mandatory reporting provisions of this article who knowingly
2 fails to make any report required herein or any person who knowingly prevents another person
3 from making such a report is guilty of a misdemeanor, and, upon conviction thereof, shall be fined
4 not more than \$100 or imprisoned in the county jail for not more than ten days, or both fined and
5 imprisoned.

§9-3-616. Rulemaking.

1 (a) The secretary shall propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 et seq. of this code regarding the organization and duties of the adult
3 protective services system and the procedures to be used by the department to effectuate the
4 purposes of this article.

5 (b) The secretary shall design and arrange such rules to attain, or move toward the

6 attainment, of the following goals to the extent that the secretary believes feasible under the
7 provisions of this article within state appropriations and other funds available:

8 (1) Assisting adults who are abused, neglected or incapacitated in achieving or
9 maintaining self-sufficiency and self-support and preventing, reducing and eliminating their
10 dependency on the state;

11 (2) Preventing, reducing and eliminating neglect and abuse of adults who are unable to
12 protect their own interests;

13 (3) Preventing and reducing institutional care of adults by providing less intensive forms
14 of care, preferably in the home;

15 (4) Referring and admitting abused, neglected or incapacitated adults to institutional care
16 only where other available services are inappropriate;

17 (5) Providing services and monitoring to adults in institutions designed to assist adults in
18 returning to community settings;

19 (6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility
20 residents through the joint efforts of the various agencies of the Department of Human Services,
21 the adult protective services system, the state and regional long-term care ombudsmen,
22 administrators of nursing homes or other residential facilities and county prosecutors;

23 (7) Preventing, reducing and eliminating abuse and neglect of residents in nursing homes
24 or facilities; and

25 (8) Coordinating investigation activities for complaints of abuse and neglect of
26 incapacitated adults and facility residents among the various agencies of the Department of
27 Human Services, the adult protective services system, the state and regional long-term care
28 ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, if
29 necessary, and other state or federal agencies or officials, as appropriate.

30 (c) The rules proposed by the secretary shall provide for the means by which the
31 department shall cooperate with federal, state and other agencies to fulfill the objectives of the

32 system of adult protective services.

PART SEVEN. BUREAU FOR ECONOMIC ASSISTANCE.

§9-3-701. Creation of the Bureau for Economic Assistance.

1 Effective the first day of July, 2019, The Bureau for Economic Assistance is created and
2 continued within the Department of Human Services.

§9-3-702. Appointment of commissioner; qualifications; oath; compensation.

1 (a) There is hereby created the position of commissioner. The commissioner shall:

2 (1) Be appointed by the Governor with advice and consent of the Senate;

3 (2) Report directly to the secretary;

4 (3) Serve at the will and pleasure of the Governor;

5 (4) Serve on a full-time basis and shall not engage in any other profession or occupation,
6 including the holding of a political office in the state either by election or appointment, while serving
7 as commissioner; and

8 (5) Have an appropriate educational level and reasonable administrative experience,
9 possess management skills and have knowledge of programs designed to provide public
10 assistance to eligible persons.

11 (b) Before entering upon the discharge of the duties as commissioner, the commissioner
12 shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution
13 of West Virginia.

14 (c) The commissioner shall receive:

15 (1) A reasonable and competitive compensation package to be established by the
16 secretary; and

17 (2) Reimbursement for expenses under the standard state travel regulations.

§9-3-703. Powers and duties of the commissioner.

1 (a) In addition to the powers and duties set forth in any other provision of this code, the

2 commissioner has the following powers and duties:

3 (1) To develop and maintain a state plan which:

4 (A) Sets forth needs of the state in providing public assistance to person who qualify;

5 (B) Sets forth goals and objectives for meeting those needs; and

6 (C) Contains plans of operation for achieving the stated goals and objectives, including
7 organizational structure; and statement of requirements in personnel funds and authority for
8 achieving the goals and objectives.

9 (2) To appoint deputies and assistants to supervise the bureau's programs and such other
10 assistants and employees as may be necessary for the efficient operation of the bureau and all
11 its programs.

12 (3) To delegate to any of his or her appointees, assistants or employees all powers and
13 duties vested in the commissioner, including the power to execute contracts and agreements in
14 the name of the bureau as provided in this article. The commissioner shall be responsible for the
15 acts of such appointees, assistants and employees.

16 (4) To make periodic reports to the secretary, Governor and to the Legislature as required
17 by this chapter.

18 (b) The commissioner is authorized and empowered to accept and use for the benefit of
19 the state programs any gift or devise of any property or thing which lawfully may be given. Any
20 gift or devise of any property or thing which lawfully may be given and whatever profit may arise
21 from its use or investment shall be deposited in a special revenue fund with the State Treasurer,
22 and shall be used only as specified by the donor or donors.

§9-3-704. Organization and employees.

1 (a) The commissioner shall organize the work of the bureau in such offices or other
2 organizational units as he or she may determine to be necessary for effective and efficient
3 operation.

4 (b) The commissioner shall employ a sufficient number of employees so as to provide for

5 the effective and efficient operation of the bureau.

6 (c) The secretary may transfer employees and resources of the department to the bureau
7 as may be necessary to fulfill the duties and responsibilities of the bureau pursuant to this chapter.
8 The secretary may not transfer employees of other divisions and agencies within the department
9 to the bureau without a prior finding that the office or position held by the employee may be
10 eliminated and until the office or position is, in fact, eliminated.

11 (d) The commissioner, if he or she deems such action necessary, may hire legal counsel
12 for the bureau, notwithstanding the provisions of §5-3-2 of this code or any other code provision
13 to the contrary, or may request the Attorney General to appoint counsel who shall perform such
14 duties as may be required by the bureau. The Attorney General, in pursuance of such request,
15 may select and appoint counsel to serve during the will and pleasure of the Attorney General, and
16 shall be paid out of any funds allocated and appropriated to the bureau.

17 (e) The commissioner may employ such staff or employees as may be necessary to
18 administer and enforce this chapter.

§9-3-705. Supervisory responsibilities of the commissioner.

1 The commissioner shall have control and supervision of the bureau and shall be
2 responsible for the work of each of its organizational units. Each organizational unit shall be
3 headed by an employee of the bureau appointed by the commissioner who shall be responsible
4 to the commissioner for the work of his or her organizational unit.

§9-3-706. General duties and powers of the Bureau for Economic Assistance.

1 (a) In carrying out the policies and procedures for enforcing the provisions of this chapter,
2 the bureau shall have the following power and authority:

3 (1) To establish policies and procedures for governing the administration of the bureau
4 and providing public assistance to the citizens of this state as set forth in this code;

5 (2) To formulate standard fiscal procedures and make recommendations for improvement
6 of the bureau;

7 (3) To provide for a procedure for supplies and equipment for the bureau;

8 (4) To act as a liaison with other state entities and private groups with an interest in
9 economic assistance to children and families;

10 (5) To offer economic assistance services to those who meet the eligibility standards set
11 by the bureau and the federal government through laws, rules and regulations; and

12 (6) To perform any other duties assigned to the bureau by the secretary.

13 (b) To operate and oversee the West Virginia Works Program as set forth in the chapter.

14 (c) To operate and oversee the Supplement Nutrition Assistance Program codified at 7
15 U.S.C. 51.

16 (d) To operate and oversee any other economic assistance programs.

§9-3-707. Continuation of present aid; contributions by counties.

1 (a) Except as otherwise provided in this chapter, aid or assistance rendered under existing
2 law shall not be deemed to be discontinued.

3 (b) County commissions may contribute in-kind services or money into a special fund of
4 the department to expand the general assistance programs for citizens of its county. No part of
5 this fund shall revert to the general revenue of the state.

§9-3-708. Application for and granting of federal-state or federal assistance.

1 Any person domiciled in this state, who shall make, or have made in his or her behalf, an
2 application therefor and who is otherwise in all respects qualified to receive the same, shall be
3 granted federal-state assistance or federal assistance in such form and amount, to such extent,
4 and for such period, as authorized by applicable federal and state laws, rules and regulations and
5 as determined by the bureau in accordance with such laws, rules and regulations and within limits
6 of available funds.

§9-3-709. Application for and granting of state assistance.

1 Any indigent person domiciled in this state, who shall make, or have made in his or her
2 behalf, an application therefor and who is otherwise in all respects qualified to receive the same,

3 shall be granted state assistance in such form and amount, to such extent, and for such period,
4 as authorized by applicable state laws, rules and regulations of the bureau and as determined by
5 the bureau in accordance with such laws, rules and regulations and within limits of available funds.

§9-3-710. Making application, investigation and grant.

1 (a) All persons wishing to make application for economic assistance services shall have
2 an opportunity to do so. Upon receipt of an application for economic assistance services, the
3 bureau shall make such investigation as may be necessary and as the exigency of the case will
4 permit to determine the eligibility of the applicant for, and the form, amount, extent, and period of,
5 such assistance.

6 (b) When the bureau approves an application for economic assistance services, it shall fix
7 the amount, form, extent and period of such assistance in accordance with applicable federal and
8 state laws, rules and regulations and within the limits of available funds.

§9-3-711. Penalties for false statements, etc.

1 Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient
2 in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation
3 or by impersonation of any other fraudulent device:

4 (1) Any assistance to which the applicant or recipient is not entitled; or

5 (2) Any assistance in excess of that to which the applicant or recipient is justly entitled;
6 shall upon conviction be punished as follows:

7 (A) If the aggregate value of all funds or other benefits obtained or attempted to be
8 obtained shall be \$500 or less, the person so convicted shall be guilty of a misdemeanor and,
9 shall be fined not more than \$1,000 or confined in jail not exceeding one year; or

10 (B) If the aggregate value of all funds or other benefits obtained or attempted to be
11 obtained shall exceed \$500, the person so convicted shall be guilty of a felony and, shall be fined
12 not more than \$5,000 or confined in the penitentiary not less than one year nor more than five
13 years.

§9-3-712. Special Supplementary Food Program for Women, Infants and Children (WIC).

1 Effective January 1, 2019, the WIC program shall be organized within the Bureau for
2 Economic Assistance. All employees, functions, agreements, contracts or any other matter
3 relating to the WIC program shall transfer to the bureau at that time.

4 (b) Vouchers or coupons or drafts authorized by the bureau in the administration of the
5 special supplementary food program for women, infants and children, commonly known as the
6 WIC program, under the auspices and guidelines of the United States Department of Agriculture,
7 such vouchers or coupons or drafts, when received by a vendor from a holder thereof in exchange
8 for food, food stuffs, or authorized goods or services, may be deposited by the vendor in any
9 federally insured bank in this state for collection and payment thereof, and such bank shall accept
10 the same as equivalent to a negotiable instrument from a holder in due course pursuant to chapter
11 forty-six of this code, and shall collect the funds for such vouchers or coupons so received.

12 (c) All moneys received from the United States Department of Agriculture under the WIC
13 program, except for moneys to be used for administration, shall be deposited by the commissioner
14 of the Bureau of Economic Assistance in a special account in a federally insured bank in this
15 state, and notwithstanding other provisions of this code to the contrary, this special account may
16 be funded by the commissioner of the Bureau for Economic Assistance as a special advance
17 payment imprest funds account to be reconciled at least annually by the state Treasurer from
18 which said bank can daily make required wire transfers to pay each day's presentments of
19 vouchers or coupons or drafts. The commissioner of the Bureau for Economic Assistance shall
20 select the bank by competitive bidding in the same manner as the state Treasurer selects
21 depository banks for state funds, subject to applicable federal laws or regulations governing such
22 selection.

23 (d) The provisions of this section enacted in the year one thousand nine hundred eighty-
24 nine shall take effect on April 1, one thousand nine hundred ninety, except that the commissioner
25 shall commence procedures for the selection of the bank and for implementation of the other

26 provisions of this section upon the passage hereof.

27 (e) Nothing in this section shall make such vouchers or coupons or drafts negotiable
28 instruments for any purpose other than expressly set forth herein or as permitted by applicable
29 federal laws or regulations.

§9-3-713. Assignment of support obligations.

1 (a) Any recipient of financial assistance under the program of state and federal assistance
2 established by Title IV of the federal Social Security Act of 1965, as amended, or any successor
3 act thereto, shall, as a condition of receiving assistance funded pursuant to this article assign to
4 the Department of Human Services any right the family member may have, on behalf of the family
5 member or of any other person for whom the family member has applied for or is receiving such
6 assistance, to support from any other person, not exceeding the total amount of assistance so
7 paid to the family, which accrues during the period that the family receives assistance under the
8 program.

9 (b) Each applicant for assistance subject to the assignment established in this section
10 shall, during the application process, be informed in writing of the nature of the assignment.

11 (c) Any payment of federal and state assistance made to, or for the benefit of, any child or
12 children or the caretaker of a child or children creates a debt due and owing to the Department of
13 Human Services by the person or persons responsible for the support and maintenance of the
14 child, children or caretaker in an amount equal to the amount of assistance paid: *Provided, That*
15 the debt is limited by the amount established in any court order or final decree of divorce if the
16 amount in the order or decree is less than the amount of assistance paid.

17 (d) The assignment pursuant to this section shall subrogate the Department of Human
18 Services to the rights of the child, children or caretaker to the prosecution or maintenance of any
19 action or procedure existing under law providing a remedy whereby the Department of Human
20 Services may be reimbursed for moneys expended on behalf of the child, children or caretaker.
21 The Department of Human Services shall further be subrogated to the debt created by any order

22 or decree awarding support and maintenance to, or for the benefit of, any child, children or
23 caretaker included within the assignment under this section and shall be empowered to receive
24 money judgments and endorse any check, draft, note or other negotiable document in payment
25 thereof.

26 (e) The assignment created pursuant to this section shall be released upon closure of the
27 assistance case and the termination of assistance payments except for support and maintenance
28 obligations accrued and owing at the time of closure which are necessary to reimburse the
29 department for any balance of assistance payments made.

30 (f) The Department of Human Services may, at the election of the recipient, continue to
31 receive support and maintenance moneys on behalf of the recipient following closure of the
32 assistance case and shall distribute the moneys to the caretaker, child or children.

§9-3-714. Authority to examine witnesses, administer oaths and take affidavits.

1 The secretary, the commissioner and employees of the department may administer oaths,
2 examine witnesses and take and certify affidavits in any matter or thing pertaining to the business
3 of the department.

§9-3-715. Authority to subpoena witnesses and documents when investigating the
provision of assistance programs.

1 The secretary and the commissioner and every duly appointed hearing examiner may
2 apply, on behalf of any party, to the circuit court of the county in which a hearing is to be held, or
3 the circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of
4 either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel
5 the attendance of witnesses or the production of documents, before any hearing or administrative
6 tribunal convened to consider suspension or termination of any person or corporation from
7 providing services under the public assistance programs administered by the department. The
8 application for a subpoena duces tecum shall state with particularity any papers or documents
9 requested and upon hearing, the applicant or party shall notify the court or judge, as the case

10 may be, of the necessity therefor in such hearing. The court or judge thereof, prior to issuing the
11 requested subpoena or subpoena duces tecum, may make any order which justice requires to
12 protect a party or person from annoyance, embarrassment, oppression or undue burden or
13 expense. The party who applies for the subpoena or subpoena duces tecum shall pay the sheriff's
14 fees required for service of these documents.

PART EIGHT. WEST VIRGINIA WORKS ACT.

§9-3-801. Legislative findings; purpose.

1 (a) The Legislature hereby finds and declares that:
2 (1) The entitlement of any person to receive federal-state cash assistance is hereby
3 discontinued;
4 (2) At-risk families are capable of becoming self-supporting;
5 (3) An assistance program should both expect and assist a parent and caretaker-relatives
6 in at-risk families to support their dependent children and children for which they are caretakers;
7 (4) Every parent or caretaker-relative can exhibit responsible patterns of behavior so as
8 to be a positive role model;
9 (5) Every parent or caretaker-relative who receives cash assistance has a responsibility
10 to participate in an activity to help them prepare for, obtain and maintain gainful employment;
11 (6) For a parent or caretaker-relative who receives cash assistance and for whom full-time
12 work is not feasible, participation in some activity is required to further himself or herself, his or
13 her family or his or her community;
14 (7) The state should promote the value of work and the capabilities of individuals;
15 (8) Job development efforts should enhance the employment opportunities of participants;
16 (9) Education is the key to achieving and maintaining life-long self-sufficiency; and
17 (10) An assistance program should be structured to achieve a clear set of outcomes;
18 deliver services in an expedient, effective and efficient manner; and maximize community support

19 for participants.

20 (b) The goals of the program are to achieve more efficient and effective use of public
21 assistance funds; reduce dependency on public programs by promoting self-sufficiency; and
22 structure the assistance programs to emphasize employment and personal responsibility. The
23 success of the program is to be evaluated on the following activities, including, but not limited to:
24 Job entry, job retention, federal work participation requirements and completion of educational
25 activities.

§9-3-802. Authorization for program.

1 (a) The secretary shall conduct the West Virginia Works Program in accordance with this
2 article and any applicable regulations promulgated by the secretary of the federal Department of
3 Health and Human Services in accordance with federal block-grant funding or similar federal
4 funding stream. This program shall expend only the funds appropriated by the Legislature to
5 establish and operate the program or any other funds available to the program; establish
6 administrative due process procedures for reduction or termination proceedings; and implement
7 any other procedures necessary to accomplish the purpose of this article.

8 (b) The West Virginia Works Program authorized pursuant to this article does not create
9 an entitlement to that program or any services offered within that program, unless entitlement is
10 created pursuant to a federal law or regulation. The West Virginia Works Program and each
11 component of that program established by this article or the expansion of any component
12 established pursuant to federal law or regulation is subject to the annual appropriation of funds
13 by the Legislature.

§9-3-803. West Virginia Works Program fund.

1 There is continued a special account within the state Treasury to be known as the "West
2 Virginia Works Program Fund". Expenditures from the fund shall be used exclusively to meet the
3 necessary expenditures of the program, including wage reimbursements to participating
4 employers, temporary assistance for needy families, payments for support services, employment-

5 related child care payments, transportation expenses and administrative costs directly associated
6 with the operation of the program. Moneys paid into the account shall be from specific annual
7 appropriations of funds by the Legislature.

§9-3-804. Program participation.

1 (a) Unless otherwise noted in this article, all adult beneficiaries of cash assistance and
2 work eligible individuals shall participate in the West Virginia Works Program in accordance with
3 the provisions of this article. The level of participation, services to be delivered and work
4 requirements shall be defined through legislative rules established by the secretary.

5 (b) Any individual exempt under the provisions of this article may participate in the
6 activities and programs offered through the West Virginia Works Program.

7 (c) Support services other than cash assistance through the West Virginia Works Program
8 may be provided to at-risk families to assist in meeting the work requirements or to eliminate the
9 need for cash assistance.

10 (d) Cash assistance through the West Virginia Works Program may be provided to an at-
11 risk family if the combined family income, as defined in this article, is below the income test levels
12 established by the department, subject to the following:

13 (1) Any adult member of an at-risk family who receives supplemental security income shall
14 be excluded from the benefit group;

15 (2) Within the limits of funds appropriated therefor, an at-risk family that includes a married
16 man and woman and dependent children of either one or both may receive an additional cash
17 assistance benefit in an amount of \$100 or less; and

18 (3) An at-risk family shall receive an additional cash assistance benefit in the amount of
19 \$25 regardless of the amount of child support collected in a month on behalf of a child or children
20 of the at-risk family, as allowed by federal law.

§9-3-805. Work requirements.

1 (a) Unless otherwise exempted by the provisions of this article, the West Virginia Works

2 Program shall require that anyone who possesses a high school diploma, or its equivalent, or
3 anyone who is of the age of twenty years or more, to work or attend an educational or training
4 program for at least the minimum number of hours per week required by federal law under the
5 work participation rate requirements for all families in order to receive any form of cash assistance.
6 Participation in any education or training activity, as defined in this article, shall be counted toward
7 satisfaction of the work requirement imposed by this section to the extent permissible under
8 federal law and regulation and the participant demonstrates adequate progress toward completion
9 of the program. In accordance with federal law or regulation, the work, education and training
10 requirements of this section are waived for any qualifying participant with a child under six years
11 of age if the participant is unable to obtain appropriate and available child care services.

12 (b) The department and representatives of the Higher Education Policy Commission and
13 the West Virginia Council for Community and Technical College Education shall develop and
14 implement a plan to use and expand the programs available at the state's community and
15 technical colleges, colleges and universities to assist beneficiaries or participants who are
16 enrolled, or wish to become enrolled, in vocational-educational training not to exceed twelve
17 months with respect to any individual to meet the work requirements of this section. Vocational-
18 educational training shall be supervised daily and on an ongoing basis.

§9-3-806. Exemptions.

1 The secretary shall establish by rule categories of persons exempt, but the exemption
2 applies only to the work requirements of the program. A person who is exempt from the work
3 requirements may participate voluntarily in work activities. The categories of exemptions are
4 limited to the following:

5 (1) Undocumented aliens and aliens under the five-year ban;

6 (2) Parents, or at state option on a case-by-case basis, anyone receiving supplemental
7 security income;

8 (3) A parent who is providing medically necessary care for a disabled family member who

9 resides in the home and is not a full-time student;

10 (4) Minor parents who are not head of household (spouses of the head of household); and

11 (5) Grandparents and other nonparental caretakers.

§9-3-807. Personal responsibility contract.

1 (a)(1) Every eligible adult beneficiary and work eligible individual shall participate in a
2 program orientation, family assessments and in the development, and subsequent revisions, of a
3 personal responsibility contract. The contract shall be defined based on the program time limits,
4 support services available, work requirements and family assessments.

5 (2) The participant's contract shall include the following requirements:

6 (A) That the participant develop and maintain, with the appropriate health care provider, a
7 schedule of preventive care for his or her dependent child or children, including routine
8 examinations and immunizations;

9 (B) Assurance of school attendance for school-age children under his or her care;

10 (C) Assurance of properly supervised child care, including after-school care;

11 (D) Establishment of paternity or active pursuit of child support, or both, if applicable and
12 if considered necessary; and

13 (E) Nutrition or other counseling, parenting or family-planning classes.

14 (3) If the participant is a teenage parent, he or she may work, but the contract shall include
15 the requirements that the participant:

16 (A) Remain in an educational activity to complete high school, obtain a general
17 equivalency diploma or obtain vocational training and make satisfactory scholastic progress;

18 (B) Attend parenting classes or participate in a mentorship program, or both, if appropriate;
19 and

20 (C) Live at home with his or her parent or guardian or in some other adult-supervised
21 arrangements if he or she is an unemancipated minor.

22 (4) If the participant is under the age of twenty years and does not have a high school

23 diploma or its equivalent, the contract shall include requirements to participate in mandatory
24 education or training which, if the participant is unemployed, may include a return to high school,
25 with satisfactory scholastic progress required.

26 (b) In order to receive cash assistance, the participant shall enter into a personal
27 responsibility contract. If the participant refuses to sign the personal responsibility contract, the
28 participant and family members are ineligible to receive cash assistance. A participant who
29 alleges that the terms of a personal responsibility contract are inappropriate based on his or her
30 individual circumstances may request, and shall be provided, a fair and impartial hearing in
31 accordance with administrative procedures established by the Department of Health and
32 Compliance as set forth in §9-2-1 et seq. of this code and due process of law. A participant who
33 signs a personal responsibility contract or complies with a personal responsibility contract does
34 not waive his or her right to request and receive a hearing pursuant to this subsection.

35 (c) Personal responsibility contracts shall be drafted by the department on a case-by-case
36 basis; take into consideration the individual circumstances of each beneficiary; reviewed and
37 reevaluated periodically, but not less than on an annual basis; and, in the discretion of the
38 department, amended on a periodic basis.

§9-3-808. Participation limitation; exceptions.

1 The length of time a participant may receive cash assistance through the West Virginia
2 Works Program may not exceed a period longer than sixty months, except in circumstances as
3 defined by the secretary.

§9-3-809. Breach of contract; notice; sanctions.

1 (a) The department may terminate cash assistance benefits to an at-risk family if it finds
2 any of the following:

3 (1) Fraud or deception by the beneficiary in applying for or receiving program benefits;

4 (2) A substantial breach by the beneficiary of the requirements and obligations set forth in
5 the personal responsibility contract and any amendments or addenda to the contract; or

6 (3) A violation by the beneficiary of any provision of the personal responsibility contract or
7 any amendments or addenda to the contract, this article, or any rule or policy promulgated by the
8 secretary pursuant to this article.

9 (b) In the event the department determines that benefits received by the beneficiary are
10 subject to reduction or termination, written notice of the reduction or termination and the reason
11 for the reduction or termination shall be deposited in the United States mail, postage prepaid and
12 addressed to the beneficiary at his or her last-known address at least thirteen days prior to the
13 termination or reduction. The notice shall state the action being taken by the department and grant
14 to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the
15 Department of Health and Compliance as set forth in §9-2-1 et seq. of this code and in accordance
16 with administrative procedures established by that department and due process of law.

17 (c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has
18 the burden of proving that his or her benefits were improperly reduced or terminated and shall
19 bear his or her own costs, including attorneys' fees.

20 (d) The secretary shall promulgate emergency rules and legislative rules, pursuant to
21 §29A-3-1 et seq. of this code, setting forth the schedule of sanctions to be imposed when a
22 beneficiary has violated any provision of this article, of his or her personal responsibility contract
23 or any amendment or addendum to the contract, or any applicable department rule. In developing
24 these rules, the secretary is directed to make those sanctions graduated and sufficiently stringent,
25 when compared to those of contiguous states, so as to discourage persons from moving from
26 such states to this state to take advantage of lesser sanctions being imposed for the same or
27 similar violations by the secretary. The secretary shall also promulgate legislative rules setting
28 forth what constitutes de minimis violations and those violations subject to sanctions and
29 maximum penalties.

§9-3-810. Diversionary assistance allowance in lieu of monthly cash assistance.

1 (a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance

2 from the state, the secretary may issue one-time diversionary assistance allowances to families
3 in an amount not to exceed the equivalent of three months of cash assistance in order to enable
4 the families to become immediately self-supporting.

5 (b) The secretary shall establish by rule the standards to be considered in making
6 diversionary assistance allowances.

7 (c) Nothing in this section may be construed to require that the department or any
8 assistance issued pursuant to this section be subject to any of the provisions of chapter thirty-one
9 or chapter forty-six-a of this code.

§9-3-811. Subsidized employment.

1 (a) To the extent that resources are available, an employer may be paid a subsidy by the
2 department to employ a parent or caretaker-relative of an at-risk family if the employer agrees to
3 hire the West Virginia Works Program participant at the end of the subsidized period. If the
4 employer does not hire the participant at the end of the subsidized period, the program may not
5 use that employer for subsidized employment for the next twelve months.

6 (b) If the department determines that an employer has demonstrated a pattern of
7 discharging employees hired pursuant to the provisions of this section subsequent to the
8 expiration of the subsidized period without good cause, the employer shall no longer be eligible
9 for participation in the subsidized employment program for a period to be determined by the
10 department.

§9-3-812. Transitional assistance.

1 The West Virginia Works Program may provide transitional assistance in the form of
2 supportive services.

§9-3-813. Interagency coordination.

1 (a) The Legislature encourages the development of a system of coordinated services,
2 shared information and streamlined application procedures between the program and the other
3 agencies within various departments of state government to implement the provisions of this

4 article. The secretary shall coordinate activities between the program and the following agencies:

5 (1) The Bureau for Child Support Enforcement for the purpose of establishing paternity,
6 promoting cooperation in the pursuit of child support, encouraging noncustodial parents to get job
7 search assistance and determining eligibility for cash assistance and support services;

8 (2) The Bureau for Public Health for the purpose of determining appropriate immunization
9 schedules, delivery systems and verification procedures; and

10 (3) The Bureau for Medical Services for the purpose of reporting eligibility for medical
11 assistance and transitional benefits.

12 (b) The secretary may require the coordination of procedures and services with any other
13 agency he or she considers necessary to implement this program. All agencies coordinating
14 services with the department shall, when provided with access to department records or
15 information, abide by state and federal confidentiality requirements including the provisions of this
16 article.

17 (c) The secretary shall propose any rules, including emergency rules, necessary for the
18 coordination of various agency activities in the implementation of this section.

§9-3-814. Intergovernmental coordination.

1 (a) The commissioner of the Bureau of Employment Programs and the superintendent of
2 the Department of Education shall assist the secretary in the establishment of the West Virginia
3 Works Program. Before implementation of this program, each department shall address in its
4 respective plan the method in which its resources will be devoted to facilitate the identification of
5 or delivery of services for participants and shall coordinate its respective programs with the
6 department in the provision of services to participants and their families. Each county board of
7 education shall designate a person to coordinate with the local Department of Human Services
8 office the board's services to participant families and that person shall work to achieve
9 coordination at the local level.

10 (b) The secretary and the superintendent shall develop a plan for program implementation

11 to occur with the use of existing state facilities and county transportation systems within the project
12 areas whenever practicable. This agreement shall include, but not be limited to, the use of
13 buildings, grounds and buses. Whenever possible, the supportive services, education and training
14 programs should be offered at the existing school facilities.

15 (c) The commissioner shall give priority to participants of the West Virginia Works Program
16 within the various programs of the Bureau of Employment Programs. The secretary and the
17 commissioner shall develop reporting and monitoring mechanisms between their respective
18 agencies.

§9-3-815. Public-private partnerships.

1 The secretary may enter into agreements with any private, nonprofit, charitable or religious
2 organizations to promote the development of the community support services necessary for the
3 effective implementation of this program, including cooperative arrangements with private
4 employers of former program participants for the purpose of obtaining and maintaining employer-
5 based family health insurance coverage for former participants and their spouses and dependent
6 children through direct payments to the employers out of funds appropriated for the cooperative
7 agreements.

§9-3-816. Relationship with other law.

1 (a) If any provision of this article conflicts with any other provision of this code or rules, the
2 provisions of this article shall supersede such provisions. The provisions of this article shall not
3 supersede any provisions which are required or mandated by federal law.

4 (b) Any reference in this code or rules to "aid to families with dependent children" means
5 "temporary assistance for needy families" or any successor state program funded under Part A,
6 Title IV of the Social Security Act.

§9-3-817. Confidentiality, fines and penalties.

1 (a) Except as otherwise provided in this code or rules, all records and information of the
2 department regarding any beneficiary or beneficiary's family members, including the

3 Supplemental Nutrition Assistance Program, child support and Medicaid records, are confidential
4 and shall not be released, except under the following circumstances:

5 (1) If permissible under state or federal rules or regulations;

6 (2) Upon the express written consent of the beneficiary or his or her legally authorized
7 representative;

8 (3) Pursuant to an order of any court of record of this state or the United States based
9 upon a finding that the information is sufficiently relevant to a proceeding before the court to
10 outweigh the importance of maintaining the confidentiality established by this section. All
11 confidential records and information presented to the court shall, after review be sealed by the
12 clerk and shall, not be open to any person except upon order of the court upon good cause being
13 shown for the confidential records and information to be opened; or

14 (4) To a department or division of the state or other entity, pursuant to the terms of an
15 interagency or other agreement which specifically references this section and extends its
16 requirements for confidentiality to the other entity receiving the records or information, its agents
17 and employees.

18 (b) Any person who knowingly and willfully releases or causes to be released the
19 confidential records and information described in this section, except under the specific
20 circumstances enumerated in this section, is guilty of a misdemeanor and, upon conviction
21 thereof, shall be fined not more than \$500 or confined in the county or regional jail for not more
22 than six months, or both.

§9-3-818. West Virginia Works Separate State College Program; eligibility; special revenue
account.

1 (a) There is established the West Virginia Works Separate State College Program. The
2 program shall provide funding for participants who are enrolled in post-secondary courses leading
3 to a two or four year degree. There is created within the state Treasury a special revenue account
4 to be known as the "West Virginia Works Separate State College Program Fund". Expenditures

5 from the fund shall be for the purposes set forth in this section and are not authorized from
6 collections but are to be made only in accordance with appropriations by the Legislature and in
7 accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the
8 provisions of §11B-2-1 et seq. of this code. Necessary expenditures include wage
9 reimbursements to participating employers, temporary assistance for needy families, payments
10 for support services, employment-related child care payments, transportation expenses and
11 administrative costs directly associated with the operation of the program.

12 (b) All eligible adults attending post-secondary courses leading to a two or four year
13 degree and who are not participating in vocational education training, as that term is defined in
14 this article, shall be enrolled in the West Virginia Works Separate State College Program.
15 Participants in the program shall not be required to engage in more than ten hours per week of
16 federally defined work activities. The work, education and training requirements of this article are
17 waived for any qualifying participant with a child under six years of age if the participant is unable
18 to obtain appropriate and available child care services. All other requirements of West Virginia
19 Works apply to program administration for adults enrolled in the program.

20 (c) The Department of Human Services shall work with the Higher Education Policy
21 Commission, as set forth in §18B-1B-1 et seq. of this code, and the Council for Community and
22 Technical College Education, as set forth in §18B-2B-1 et seq. of this code, to develop and
23 implement a plan to use and expend funds for the programs available at the state's community
24 and technical colleges and colleges and universities to assist participants who are enrolled, or
25 wish to become enrolled, in two and four year degree programs of post-secondary education to
26 meet the work requirements of this article.

§9-3-819. West Virginia Works Separate State Two-Parent Families Program.

1 (a) There is established the West Virginia Works Separate State Two-Parent Families
2 Program. The program shall provide funding for participants who are a two-parent family as that
3 term is defined in this article. There is created within the state Treasury a special revenue account

4 to be known as the "West Virginia Works Separate State Two-Parent Program Fund".
5 Expenditures from the fund shall be for the purposes set forth in this section and are not
6 authorized from collections but are to be made only in accordance with appropriations by the
7 Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon
8 fulfillment of the provisions of §11B-2-1 et seq. of this code. Necessary expenditures include wage
9 reimbursements to participating employers, temporary assistance for third party needy families,
10 payments for support services, employment-related child care payments, transportation expenses
11 and administrative costs directly associated with the operation of the program.

12 (b) All eligible two parent families, as that term is defined in this article, shall enroll in the
13 West Virginia Works Separate State Two-Parent Families Program. All requirements of West
14 Virginia Works shall apply to program administration for two-parent families enrolled in the
15 program.

§9-3-820. State's participation in federal work incentive program.

1 (a) West Virginia acknowledges that the Congress of the United States has enacted
2 legislation amending the Social Security Act to permit states to establish work incentive programs.
3 The secretary may transfer moneys from any appropriate public assistance grant account under
4 his or her control to the special fund, administered by the United States Secretary of Labor. Any
5 moneys transferred by the secretary to the special fund shall be considered as money expended
6 for grants. The secretary may promulgate rules, establish plans and perform any other acts
7 necessary to implement this state's participation in the aforesaid work incentive program.

8 (b) The secretary shall cooperate and coordinate his or her activities with the
9 Commissioner of the Bureau of Employment Programs.

§9-3-821. Effective date of transfer.

1 Effective July 1, 2019, the West Virginia Works Program shall transfer and become under
2 the administrative functions of the Department of Human Services.

PART NINE. DRUG SCREENING.

§9-3-901. Pilot program for drug screening of applicants for cash assistance.

1 (a) As used in this section:

2 “Applicant” means a person who is applying for benefits from the Temporary Assistance
3 for Needy Families Program.

4 “Board of Review” means the board established in §9-4-1 et seq. of this code.

5 “Caseworker” means a person employed by the department with responsibility for making
6 a reasonable suspicion determination during the application process for Temporary Assistance
7 for Needy Families.

8 “Child Protective Services” means the agency within the department responsible for
9 investigating reports of child abuse and neglect as required in §49-2-802 of this code.

10 “Department” means the Department of Human Services.

11 “Drug screen” or “drug screening” means any analysis regarding substance abuse
12 conducted by the Department of Human Services on applicants for assistance from the
13 Temporary Assistance for Needy Families program.

14 “Drug test” or “drug testing” means a drug test which tests urine for Amphetamines
15 (amphetamine and methamphetamine) Cocaine, Marijuana, Opiates (codeine and morphine),
16 Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Expanded
17 Opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

18 “Secretary” means the Secretary of the Department of Human Services, or his or her
19 designee.

20 “Temporary Assistance for Needy Families Program” means assistance provided through
21 ongoing cash benefits pursuant to 42 U. S. C. §601, et seq., operated in West Virginia as the
22 West Virginia Works Program pursuant to this article.

23 (b) Subject to federal approval, the secretary shall implement and administer a three year
24 pilot program to drug screen any adult applying for assistance from the Temporary Assistance for

25 Needy Families Program. The secretary shall seek the necessary federal approval immediately
26 following the enactment of this section and the program shall begin within sixty days of receiving
27 federal approval.

28 (c) Reasonable suspicion exists if:

29 (1) A case worker determines, based upon the result of the drug screen, that the applicant
30 demonstrates qualities indicative of substance abuse based upon the indicators of the drug
31 screen; or

32 (2) An applicant has been convicted of a drug-related offense within the three years
33 immediately prior to an application for Temporary Assistance for Needy Families Program and
34 whose conviction becomes known as a result of a drug screen as set forth in this section.

35 (d) Presentation of a valid prescription for a detected substance that is prescribed by a
36 health care provider authorized to prescribe a controlled substance is an absolute defense for
37 failure of any drug test administered under the provisions of this section.

38 (e) Upon a determination by the case worker of reasonable suspicion as set forth in this
39 section an applicant shall be required to complete a drug test. The cost of administering the drug
40 test and initial substance abuse testing program is the responsibility of the Department of Human
41 Services. Any applicant whose drug test results are positive may request that the drug test
42 specimen be sent to an alternative drug-testing facility for additional drug testing. Any applicant
43 who requests an additional drug test at an alternative drug-testing facility shall be required to pay
44 the cost of the alternative drug test.

45 (f) Any applicant who has a positive drug test shall complete a substance abuse treatment
46 and counseling program and a job skills program approved by the secretary. An applicant may
47 continue to receive benefits from the Temporary Assistance for Needy Families program while
48 participating in the substance abuse treatment and counseling program or job skills program.
49 Upon completion of both a substance abuse treatment and counseling program and a job skills
50 program, the applicant is subject to periodic drug screening and testing as determined by the

51 secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for
52 Needy Families program who fails to complete, or refuses to participate in, the substance abuse
53 treatment and counseling program or job skills program as required under this subsection is
54 ineligible to receive Temporary Assistance for Needy Families until he or she is successfully
55 enrolled in substance abuse treatment and counseling and job skills programs. Upon a second
56 positive drug test, an applicant shall be ordered to complete a second substance abuse treatment
57 and counseling program and job skills program. He or she shall be suspended from the Temporary
58 Assistance for Needy Families program for a period of twelve months, or until he or she completes
59 both a substance abuse treatment and counseling program and a job skills program. Upon a third
60 positive drug test an applicant shall be permanently terminated from the Temporary Assistance
61 for Needy Families Program subject to applicable federal law.

62 (g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

63 (h) The secretary shall order an investigation and home visit from Child Protective
64 Services on any applicant whose benefits are suspended and who has not designated a protective
65 payee or whose benefits are terminated due to failure to pass a drug test. This investigation and
66 home visit may include a face-to-face interview with the child, if appropriate; the development of
67 a protection plan; and, if necessary for the health and well-being of the child, may also involve
68 law enforcement. This investigation and home visit shall be followed by a report detailing
69 recommended action which Child Protective Services shall undertake. Child Protective Services
70 is responsible for providing, directing or coordinating the appropriate and timely delivery of
71 services to any child who is the subject of any investigation and home visit conducted pursuant
72 to this section. In cases where Child Protective Services determines that the best interests of the
73 child requires court action, they shall initiate the appropriate legal proceeding.

74 (i) Any other adult members of a household that includes a person declared ineligible for
75 the Temporary Assistance for Needy Families program pursuant to this section shall, if otherwise
76 eligible, continue to receive Temporary Assistance for Needy Families benefits.

77 (j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for
78 Needy Families program may be affected by a parent's failure to pass a drug test.

79 (2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance
80 for Needy Families program, the dependent child's eligibility is not affected and an appropriate
81 protective payee shall be designated to receive benefits on behalf of the child.

82 (3) The parent may choose to designate another person as a protective payee to receive
83 benefits for the minor child. The designated person shall be an immediate family member, or if an
84 immediate family member is not available or declines the option, another person may be
85 designated.

86 (4) The secretary shall screen and approve the designated person.

87 (k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits
88 pursuant to subsection (f) of this section due to a failure to participate in a substance abuse
89 treatment and counseling program or a job skills program who can later document successful
90 completion of a drug treatment program approved by the secretary may reapply for benefits six
91 months after the completion of the substance abuse treatment and counseling program or job
92 skills program. An applicant who has met the requirements of this subdivision and reapplies is
93 also required to submit to a drug test and is subject to the provisions of subsection (f) of this
94 section.

95 (2) An applicant may reapply only once pursuant to the exceptions contained in this
96 subsection.

97 (3) The cost of any drug screen or test and drug treatment provided under subsection (k)
98 is the responsibility of the individual being screened and receiving treatment.

99 (l) An applicant who is denied assistance under this section may request a review of the
100 denial by the Board of Review. The results of a drug screen or test are admissible without further
101 authentication or qualification in the review of denial by the Board of Review and in any appeal.
102 The Board of Review shall provide a fair, impartial and expeditious grievance and appeal process

103 to applicants who have been denied Temporary Assistance for Needy Families pursuant to the
104 provisions of this section. The Board of Review shall make findings regarding the denial of benefits
105 and issue a decision which either verifies the denial or reverses the decision to deny benefits.
106 Any applicant adversely affected or aggrieved by a final decision or order of the Board of Review
107 may seek judicial review of that decision.

108 (m) The secretary shall ensure the confidentiality of all drug screen and drug test results
109 administered as part of this program. Drug screen and test results shall be used only for the
110 purpose of determining eligibility for the Temporary Assistance for Needy Families program. At
111 no time may drug screen or test results be released to any public or private person or entity or
112 any law-enforcement agency, except as otherwise authorized by this section.

113 (n) The secretary shall promulgate emergency rules pursuant to the provisions of §29A-
114 3-1 et seq. of this code to prescribe the design, operation and standards for the implementation
115 of this section.

116 (o) A person who intentionally misrepresents any material fact in an application filed under
117 the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
118 punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to
119 exceed six months, or by both fine and confinement.

120 (p) The secretary shall report to the Joint Committee on Government and Finance by
121 December 31, 2016, and annually after that until the conclusion of the pilot program on the status
122 of the federal approval and pilot program described in this section. The report shall include, but is
123 not limited to:

124 (1) The total number of applicants who were deemed ineligible to receive benefits under
125 the program due to a positive drug test for controlled substances;

126 (2) The number of applicants for whom there was a reasonable suspicion due to a
127 conviction of a drug-related offense within the five years prior to an application for assistance;

128 (3) The number of those applicants that receive benefits after successful completion of a

129 drug treatment program as specified in this section; and

130 (4) The total cost to operate the program.

131 (q) Should federal approval not be given for any portion of the program as set forth in this
132 section, the secretary shall implement the program to meet the federal objections and continue to
133 operate a three year pilot program consistent with the purpose of this section.

134 (r) For the purposes of the pilot program contained in this section, pursuant to the authority
135 and option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all
136 persons domiciled within the state from the application of 21 U. S. C. §862a(a).

PART TEN. BUREAU FOR MEDICAL SERVICES.

§9-3-1001. Creation of the Bureau for Medical Services.

1 Effective the first day of July, 2019, The Bureau for Medical Services is created and
2 continued within the Department of Human Services.

§9-3-1002. Appointment of commissioner; qualifications; compensation.

1 (a) There is created the position of commissioner. The commissioner shall:

2 (1) Be appointed by the Governor with advice and consent of the Senate;

3 (2) Report directly to the secretary;

4 (3) Serve at the will and pleasure of the Governor;

5 (4) Serve on a full-time basis and shall not engage in any other profession or occupation,
6 including the holding of a political office in the state either by election or appointment, while serving
7 as commissioner; and

8 (5) Have an appropriate educational level and administrative experience, possess
9 management skills and have knowledge of insurance, specifically publicly provided insurance.

10 (b) Before entering upon the discharge of the duties as commissioner, the commissioner
11 shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution
12 of West Virginia.

13 (c) The commissioner shall receive:

14 (1) A reasonable and competitive compensation package to be established by the
15 secretary; and

16 (2) Reimbursement for expenses under the standard state travel regulations.

§9-3-1003. Powers and duties of the commissioner.

1 (a) In addition to the powers and duties set forth in any other provision of this code, the
2 commissioner shall have the following powers and duties:

3 (1) To develop and maintain a state plan which:

4 (A) Sets forth needs of the state in providing medical assistance to person who qualify;

5 (B) Sets forth goals and objectives for meeting those needs; and

6 (C) Contains plans of operation for achieving the stated goals and objectives, including
7 organizational structure; and statement of requirements in personnel funds and authority for
8 achieving the goals and objectives.

9 (2) To appoint deputies and assistants to supervise the bureau's programs and such other
10 assistants and employees as may be necessary for the efficient operation of the bureau and all
11 its programs.

12 (3) To delegate to any of his or her appointees, assistants or employees all powers and
13 duties vested in the commissioner, including the power to execute contracts and agreements in
14 the name of the bureau as provided in this article. The commissioner shall be responsible for the
15 acts of such appointees, assistants and employees.

16 (4) To make periodic reports to the secretary, Governor and to the Legislature as required
17 by this chapter.

18 (b) The commissioner is authorized and empowered to accept and use for the benefit of
19 the Medicaid program any gift or devise of any property or thing which lawfully may be given. Any
20 gift or devise of any property or thing which lawfully may be given and whatever profit may arise
21 from its use or investment shall be deposited in a special revenue fund with the State Treasurer,

22 and shall be used only as specified by the donor or donors.

§9-3-1004. Organization and employees.

1 (a) The commissioner shall organize the work of the bureau in such offices or other
2 organizational units as he or she may determine to be necessary for effective and efficient
3 operation.

4 (b) The commissioner shall employ a sufficient number of employees so as to provide for
5 the effective and efficient operation of the bureau.

6 (c) The secretary may transfer employees and resources of the department to the bureau
7 as may be necessary to fulfill the duties and responsibilities of the bureau pursuant to this chapter.
8 The secretary may not transfer employees of other divisions and agencies within the department
9 to the bureau without a prior finding that the office or position held by the employee may be
10 eliminated and until the office or position is, in fact, eliminated.

11 (d) The commissioner, if he or she deems such action necessary, may hire legal counsel
12 for the bureau, notwithstanding the provisions of §5-3-2 of this code or any other code provision
13 to the contrary, or may request the Attorney General to appoint counsel who shall perform such
14 duties as may be required by the bureau. The Attorney General, in pursuance of such request,
15 may select and appoint counsel to serve at the will and pleasure of the Attorney General, and
16 shall be paid out of any funds allocated and appropriated to the bureau.

17 (e) The commissioner may employ such staff or employees as may be necessary to
18 administer and enforce this chapter.

§9-3-1005. Supervisory responsibilities of the commissioner.

1 The commissioner shall have control and supervision of the bureau and shall be
2 responsible for the work of each of its organizational units. Each organizational unit shall be
3 headed by an employee of the bureau appointed by the commissioner who shall be responsible
4 to the commissioner for the work of his or her organizational unit.

§9-3-1006. General duties and powers of the Bureau for Medical Services.

1 In carrying out the policies and procedures for enforcing the provisions of this chapter, the
2 bureau shall have the following power and authority:

3 (1) To establish policies and procedures for governing the administration of the bureau
4 and the awarding of medical assistance;

5 (2) To formulate standard fiscal procedures and make recommendations for improvement
6 of the bureau;

7 (3) To provide for a procedure for supplies and equipment for the bureau;

8 (4) To act as a liaison with other state entities and private groups with an interest in medical
9 assistance;

10 (5) To offer medical assistance to persons who meet the eligibility standards set by the
11 bureau and the federal government through laws, rules and regulations; and

12 (6) To perform any other duties assigned to the bureau by the secretary.

§9-3-1007. Bureau of Medical Services information.

1 (a) The Bureau of Medical Services shall publish all informational bulletins, health plan
2 advisories, and guidance published by the department concerning the Medicaid program on the
3 department's website.

4 (b) The bureau shall publish all Medicaid state plan amendments and any related
5 correspondence within twenty-four hours of receipt of the correspondence submission to the
6 Centers for Medicare and Medicaid Services.

7 (c) The bureau shall publish all formal responses by the Centers for Medicare and
8 Medicaid Services regarding any state plan amendment on the department's website within
9 twenty-four hours of receipt of the correspondence.

§9-3-1008. Continuation of present aid; contributions by counties.

1 (a) Except as otherwise provided in this chapter, aid or assistance rendered under existing
2 law shall not be deemed to be discontinued.

3 (b) County commissions may contribute in-kind services or money into a special fund of

4 the department to expand the general assistance programs for citizens of its county. No part of
5 this fund shall revert to the general revenue of the state.

§9-3-1009. Application for and granting of federal-state or federal assistance.

1 Any person domiciled in this state, who shall make, or have made in his or her behalf, an
2 application and who is otherwise qualified to receive assistance shall be granted federal-state
3 assistance or federal assistance in such form and amount, to such extent, and for such period,
4 as authorized by applicable federal and state laws, rules and regulations and as determined by
5 the department in accordance with such laws, rules and regulations and within limits of available
6 funds.

§9-3-1010. Investigation and grant.

1 (a) Upon receipt of an application for any class of assistance, the bureau shall make an
2 investigation as may be necessary and as the exigency of the case will permit to determine the
3 eligibility of the applicant for, and the form, amount, extent, and period of, such assistance.

4 (b) When the bureau approves an application for medical assistance, it shall fix the
5 amount, form, extent and period of the assistance in accordance with applicable federal and state
6 laws, rules and regulations and within the limits of available funds.

§9-3-1011. Penalties for false statements, etc.

1 Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient
2 in obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation
3 or by impersonation of any other fraudulent device:

4 (1) Any class of assistance to which the applicant or recipient is not entitled; or

5 (2) Any class of assistance in excess of that to which the applicant or recipient is justly
6 entitled; shall upon conviction be punished as follows:

7 (A) If the aggregate value of all funds or other benefits obtained or attempted to be
8 obtained shall be \$500 or less, the person so convicted shall be guilty of a misdemeanor and,
9 shall be fined not more than \$1,000 or confined in jail not exceeding one year; or

10 (B) If the aggregate value of all funds or other benefits obtained or attempted to be
11 obtained shall exceed \$500, the person so convicted shall be guilty of a felony and, shall be fined
12 not more than \$5,000 or confined in the penitentiary not less than one year nor more than five
13 years.

§9-3-1012. Exemption of grants from certain taxes and claims.

1 Grants of all classes of assistance received under the provisions of this chapter shall be
2 exempted from the collection of taxes except sales taxes, from levy of execution, garnishment,
3 suggestion, and any other legal process.

§9-3-1013. Medical services fund.

1 (a) The special fund known as the "Medical Services Fund" is continued.

2 (b) The fund shall consist of payments made into the fund out of state appropriations for
3 medical services to recipients of specified classes of assistance and such federal grants-in-aid as
4 are made available for specified classes of assistance. Any balance in the fund at the end of any
5 fiscal year shall remain in the fund and shall not expire or revert. Payments shall be made out of
6 the fund upon requisition of the commissioner by means of a warrant signed by the Auditor and
7 Treasurer.

8 (c) Recipients of those classes of assistance as are specified by the department,
9 consistent with applicable federal laws, rules and regulations, shall be entitled to have costs of
10 necessary medical services paid out of the fund, in the manner and amounts, to the extent, and
11 for the period determined from time to time to be feasible by the commissioner pursuant to
12 legislative rules established by him or her. The legislative rules shall comply with requirements
13 of applicable federal laws, rules and regulations and shall be established on the basis of money
14 available for the purpose, the number of recipients, the experience with respect to the incidence
15 of illness, disease, accidents, and other causes among the recipients causing them to require
16 medical services and the costs thereof, the amounts which recipients require otherwise in order
17 to maintain a subsistence compatible with decency and health, and any other factor considered

18 relevant and proper by the commissioner. The legislative rules respecting qualifications shall
19 permit the expenditure of state funds to pay for care rendered in any birthing center licensed under
20 the provisions of §16-2E-1 et seq. of this code, by a licensed nurse midwife or midwife as this
21 term is defined in §30-15-1 et seq. of this code.

§9-3-1014. Limitation on use of funds.

1 (a) No funds from the Medicaid program accounts may be used to pay for the performance
2 of an abortion by surgical or chemical means unless on the basis of the physician's best clinical
3 judgment, there is:

4 (1) A medical emergency that so complicates a pregnancy as to necessitate an immediate
5 abortion to avert the death of the mother or for which a delay will create grave peril of irreversible
6 loss of major bodily function or an equivalent injury to the mother: *Provided*, That an independent
7 physician concurs with the physician's clinical judgment; or

8 (2) Clear clinical medical evidence that the fetus has severe congenital defects or terminal
9 disease or is not expected to be delivered; or

10 (3) The individual is a victim of incest or the individual is a victim of rape when the rape is
11 reported to a law-enforcement agency.

12 (b) The Legislature intends that the state's Medicaid program not provide coverage for
13 abortion on demand and that abortion services be provided only as expressly provided in this
14 section.

§9-3-1015. Coverage for patient cost of clinical trials.

1 (a) The provisions of this section apply to health plans regulated by this article.

2 (b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the
3 Social Security Act.

4 (c) A policy, plan or contract subject to this section shall provide coverage for patient cost
5 to a member in a clinical trial, as a result of:

6 (1) Treatment provided for a life-threatening condition; or

- 7 (2) Prevention of, early detection of or treatment studies on cancer.
- 8 (d) The coverage under subsection (c) of this section is required if:
- 9 (1)(A) The treatment is being provided or the studies are being conducted in a Phase II,
10 Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or
- 11 (B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for
12 any other life-threatening condition and has therapeutic intent;
- 13 (2) The treatment is being provided in a clinical trial approved by:
- 14 (A) One of the national institutes of health;
- 15 (B) An NIH cooperative group or an NIH center;
- 16 (C) The FDA in the form of an investigational new drug application or investigational device
17 exemption;
- 18 (D) The federal department of Veterans Affairs; or
- 19 (E) An institutional review board of an institution in the state which has a multiple project
20 assurance contract approved by the office of protection from research risks of the national
21 institutes of health;
- 22 (3) The facility and personnel providing the treatment are capable of doing so by virtue of
23 their experience, training and volume of patients treated to maintain expertise;
- 24 (4) There is no clearly superior, noninvestigational treatment alternative;
- 25 (5) The available clinical or preclinical data provide a reasonable expectation that the
26 treatment will be more effective than the noninvestigational treatment alternative;
- 27 (6) The treatment is provided in this state. If the treatment is provided outside of this state,
28 the treatment must be approved by the payor designated in subsection (a) of this section;
- 29 (7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles
30 and is otherwise subject to all restrictions and obligations of the health plan; and
- 31 (8) Reimbursement for treatment by an out of network or noncontracting provider shall be
32 reimbursed at a rate which is no greater than that provided by an in network or contracting

33 provider. Coverage shall not be required if the out of network or noncontracting provider will not
34 accept this level of reimbursement.

35 (e) Payment for patient costs for a clinical trial is not required by the provisions of this
36 section, if:

37 (1) The purpose of the clinical trial is designed to extend the patent of any existing drug,
38 to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage
39 relating to additional clinical indications for an existing drug; or

40 (2) The purpose of the clinical trial is designed to keep a generic version of a drug from
41 becoming available on the market; or

42 (3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or
43 repackaged version of an existing drug.

44 (f) Any provider billing a third party payor for services or products provided to a patient in
45 a clinical trial shall provide written notice to the payor that specifically identifies the services as
46 part of a clinical trial.

47 (g) Notwithstanding any provision in this section to the contrary, coverage is not required
48 for Phase I of any clinical trial.

§9-3-1016. Maternity and infant care.

1 (a) The bureau shall:

2 (1) Extend the Medicaid coverage to pregnant women and their newborn infants to one
3 hundred fifty percent of the federal poverty level.

4 (2) Participate in the Medicaid program for indigent children and pregnant women
5 established by Congress under the Consolidated Omnibus Budget Reconciliation Act (COBRA),
6 Public Law 99-272, the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-504,
7 and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-203.

8 (3) As provided under COBRA, SOBRA, and OBRA, infants shall be included under the
9 Medicaid coverage with all children eligible for Medicaid coverage, whose family incomes are at

10 or below one hundred percent of the federal poverty level and continuing until such children reach
11 the age of eight years.

12 (4) Elect the federal options provided under COBRA, SOBRA, and OBRA, impacting
13 pregnant women and children below the poverty level. No provision in this article shall restrict the
14 bureau in exercising new options provided by, or to be in compliance with, new federal legislation
15 that further expands eligibility for children and pregnant women.

16 (5) Shall increase to no less than \$600 the reimbursement rates under the Medicaid
17 program for prenatal care, delivery and post-partum care.

18 (b) In order to be in compliance with the provisions of OBRA, through legislative rules, the
19 bureau shall ensure that pregnant women and children whose incomes are above the Temporary
20 Assistance to Needy Families (TANF) payment level are not required to apply for entitlements
21 under the TANF program as a condition of eligibility for Medicaid coverage. Further, the
22 department shall develop a short, simplified pregnancy/pediatric application of no more than three
23 pages, paralleling the simplified OBRA standards.

24 (c) Any woman who establishes eligibility pursuant to this section shall continue to be
25 treated as an eligible individual without regard to any change in income of the family of which she
26 is a member until the end of the sixty day period beginning on the last day of her pregnancy.

**§9-3-1017. Requiring substance abuse treatment providers to give pregnant woman
priority access to services.**

1 Substance abuse treatment or recovery service providers that accept Medicaid shall give
2 pregnant women priority in accessing services and shall not refuse access to services solely due
3 to pregnancy as long as the provider's services are appropriate for pregnant women.

§9-3-1018. Authority to examine witnesses, administer oaths and take affidavits.

1 The secretary, the commissioner and employees of the department may administer oaths,
2 examine witnesses and take and certify affidavits in any matter or thing pertaining to the business
3 of the department and the bureau.

§9-3-1019. Authority to subpoena witnesses and documents when investigating the provision of medical assistance programs.

1 The secretary and the commissioner and every duly appointed hearing examiner may
2 apply, on behalf of any party, to the circuit court of the county in which the hearing is to be held,
3 or the circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge
4 of either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to
5 compel the attendance of witnesses or the production of documents, before any hearing or
6 administrative tribunal convened to consider suspension or termination of any person or
7 corporation from providing services under the medical assistance programs administered by the
8 department. The application for a subpoena duces tecum shall state with particularity any papers
9 or documents requested and upon hearing, the applicant or party shall notify the court or judge,
10 as the case may be, of the necessity therefor in such hearing. The court or judge thereof, prior
11 to issuing the requested subpoena or subpoena duces tecum, may make any order which justice
12 requires to protect a party or person from annoyance, embarrassment, oppression or undue
13 burden or expense. The party who applies for the subpoena or subpoena duces tecum shall pay
14 the sheriff's fees required for service of these documents.

§9-3-1020. Collection of copayments by health care providers; penalties.

1 (a) The secretary and/or the commissioner shall institute a program which requires the
2 payment and collection of copayments. The program shall conform with Section 447.53, Chapter
3 42 of the Code of Federal Regulations, and the amount of the copayments shall be determined
4 in accordance with the provisions of Sections 447.54 and 447.55, Chapter 42 of the Code of
5 Federal Regulations. The secretary shall complete all federal requirements necessary to
6 implement this section, including the submission of any amendment to the state Medicaid plan.

7 (b) Any individual or entity receiving reimbursement from this state under the medical
8 assistance program of the Social Security Act is required to collect the copayments: *Provided,*
9 That in accordance with Section 447.15, Chapter 42 of the Code of Federal Regulations, no

10 individual or entity shall refuse care or services to any Medicaid-eligible individual because that
11 individual is unable to pay the copayment. The amount of copayments collected shall be reported
12 to the secretary.

13 (c) A person, firm, corporation or other entity who willfully, by means of a false statement
14 or representation, or by concealment of any material fact, or by other fraudulent scheme, device
15 or artifice on behalf of himself or herself, itself or others, fails to attempt to collect copayments as
16 required by this section, shall be liable for payment to the department of a civil money penalty in
17 the amount of \$100 for each occurrence of willful failure to collect a required copayment.

18 (d) If it comes to the attention of the secretary or commissioner that a person or other
19 entity is failing to attempt to collect copayments as mandated, the matter shall be referred to the
20 Medicaid Fraud Control Unit for investigation and referral for prosecution pursuant to the
21 provisions of this chapter.

§9-3-1021. Preferred drug list and drug utilization review.

1 (a) The Legislature finds that it is a public necessity that trade secrets, rebate amounts,
2 percentage of rebate, manufacturer's pricing and supplemental rebates that are contained in
3 records, as well as any meetings at which this information is negotiated or discussed need
4 confidentiality to insure the most significant rebates available for the state. Information pertaining
5 to similar agreements with the federal government and negotiated by pharmaceutical
6 manufacturers is confidential pursuant to 42 U.S.C. 1396r-8.

7 (b) A rebate as a percentage of average manufacture price is confidential under federal
8 law and the federal rebate could be made known if not protected by state law. Because of the
9 protection afforded by federal law, if this information is not protected by state law, manufacturers
10 will not be willing to offer a rebate in West Virginia.

11 (c) Further, the Legislature finds that the number and value of supplemental rebates
12 obtained by the department or bureau will increase, to the benefit of Medicaid recipients, if
13 information related to the supplemental rebates is protected in the records of the department and

14 bureau and in meetings in which this information is disclosed because manufacturers will be
15 assured they will not to be placed at a competitive disadvantage by exposure of this information.

16 (d) The secretary and/or the commissioner may develop a preferred drug list, in
17 accordance with federal law, which shall consist of federally approved drugs. The department or
18 bureau, through administration of the Medicaid program, may reimburse, where applicable and in
19 accordance with federal law, entities providing and dispensing prescription drugs from the
20 preferred drug list.

21 (e) The secretary or commissioner may negotiate and enter into agreements with
22 pharmaceutical manufacturers for supplemental rebates for Medicaid or reimbursable drugs.

23 (f) The provisions of §5A-3-1 et seq. of this code do not apply to any contract or contracts
24 entered into under this section.

25 (g) Trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and
26 supplemental rebates which are contained in the department's or bureau's records and those of
27 its agents with respect to supplemental rebate negotiations and which are prepared pursuant to
28 a supplemental rebate agreement are confidential and exempt from all of §29B-1-1 et seq. of this
29 code.

30 (h) Those portions of any meetings of the committee at which trade secrets, rebate
31 amounts, percentage of rebate, manufacturer's pricing and supplemental rebates are disclosed
32 for discussion or negotiation of a supplemental rebate agreement are exempt from all of §6-9A-1
33 et seq. of this code.

34 (i) The secretary or commissioner shall monitor and evaluate the effects of this provision
35 on Medicaid recipients, the Medicaid program, physicians and pharmacies.

36 (j) The commissioner shall implement a drug utilization review program to assure that
37 prescribing and dispensing of drug products result in the most rational cost-effective medication
38 therapy for Medicaid patients.

39 (k) Any moneys received in supplemental rebates will be deposited in the Medical Services

40 Fund.

41 (l) Within the limits of federal and state law, the secretary may consolidate preferred drug
42 lists for the Medicaid agency, the Children's Health Insurance Program and the Public Employees
43 Insurance Agency for purposes of streamlined administration and cost savings.

§9-3-1022. Medicaid program; chronic kidney disease; evaluation and classification.

1 (a) Any enrollee in Medicaid who is eligible for services and who has a diagnosis of
2 diabetes or hypertension or, who has a family history of kidney disease, shall receive coverage
3 for an evaluation for chronic kidney disease through routine clinical laboratory assessments of
4 kidney function.

5 (b) Any enrollee who has received a diagnosis of kidney disease shall be classified as a
6 chronic kidney patient.

7 (c) The diagnostic criteria used to define chronic kidney disease should be those generally
8 recognized through clinical practice guidelines which identify chronic kidney disease or its
9 complications based on the presence of kidney damage and level of kidney function.

10 (d) Medicaid providers shall be educated by the Bureau for Public Health in an effort to
11 increase the rate of evaluation and treatment for chronic kidney disease. Providers should be
12 made aware of:

13 (1) Managing risk factors, which prolong kidney function or delay progression to kidney
14 replacement therapy;

15 (2) Managing risk factors for bone disease and cardiovascular disease associated with
16 chronic kidney disease;

17 (3) Improving nutritional status of chronic kidney disease patients; and

18 (4) Correcting anemia associated with chronic kidney disease.

§9-3-1023. Annual report to Joint Committee on Government and Finance regarding
treatment for autism spectrum disorders provided by the Bureau for Medical
Services.

1 On or before January 1 each year, the bureau shall file an annual report with the Joint
2 Committee on Government and Finance describing the number of enrolled individuals with autism
3 spectrum disorder, including the fiscal and administrative impact of treatment of autism spectrum
4 disorders, and any recommendations the agency may have as to changes in law or policy related
5 to such disorder. In addition, the bureau shall provide such other information as may be requested
6 by the Joint Committee on Government and Finance as it may from time to time request.

§9-3-1024. Medicaid managed care reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (A) Total number of prescription claims;

40 (B) Total number of prescription claims denied;

41 (C) Average adjudication time for prescription claims;

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

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

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

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

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

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

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

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

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

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

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

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

PART ELEVEN. MEDICAID UNCOMPENSATED CARE FUND.

§9-3-1101. Legislative findings.

1 The Legislature finds and declares the following:

2 (1) Federal Medicaid laws encourage special recognition of disproportionate share

3 hospitals for Medicaid reimbursement purposes.

4 (2) These same federal laws permit and encourage the state to fund the Medicaid program
5 through flexible means, including public and private contributions to serve as the state share for
6 purposes of federal financial participation.

7 (3) Because of state budget constraints, moneys paid to disproportionate share hospitals
8 under the Medicaid program have not been sufficient to allow the hospitals to recover adequate
9 reimbursement for the costs associated with providing appropriate services to Medicaid clients of
10 this state.

11 (4) The policy of this state is to encourage disproportionate share hospitals to continue
12 providing health care services to the needy citizens of West Virginia; such encouragement and
13 support are increasingly important when combined with federal financial participation.

14 (5) Cost shifting is a serious problem and it is the intent of the Legislature to reduce cost
15 shifting.

§9-3-1102. Creation of Medicaid uncompensated care fund.

1 (a) There is continued in the State Treasury a special revolving fund known as the
2 “Medicaid Uncompensated Care Fund”. All moneys deposited or accrued in this fund shall be
3 used exclusively:

4 (1) To provide the state's share of the federal Medicaid program funds in order to improve
5 inpatient payments to disproportionate share hospitals; and

6 (2) To cover administrative cost incurred by the department and the bureau and
7 associated with the Medicaid program and this fund. No expenditures may be made to cover said
8 administrative costs except as appropriated by the Legislature.

9 (b) Moneys from the following sources may be placed into the fund:

10 (1) All public funds transferred by any public agency to the Medicaid program for deposit
11 in the fund as contemplated or permitted by applicable federal Medicaid laws;

12 (2) All private funds contributed, donated or bequeathed by corporations, individuals or

13 other entities to the fund as contemplated and permitted by applicable federal Medicaid laws;

14 (3) Interest which accrued on amounts in the fund from sources identified in subdivisions

15 (1) and (2) of this subsection; and

16 (4) Federal financial participation matching the amounts referred to in subdivisions (1), (2)

17 and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

18 (c) Any balance remaining in the "Medicaid Uncompensated Care Fund" at the end of any

19 state fiscal year shall not revert to the State Treasury but shall remain in this fund and shall be

20 used only in a manner consistent with this article.

21 (d) Moneys received into the fund shall not be counted or credited as part of the legislative

22 general appropriation to the state Medicaid program.

23 (e) The fund shall be administered by the bureau. Moneys shall be disbursed from the

24 fund on a quarterly basis. The secretary and/or commissioner shall implement the provisions of

25 this article prior to the receipt of any transfer, contribution, donation or bequest from any public or

26 private source.

27 (f) All moneys expended from the fund after receipt of federal financial participation shall

28 be allocated to reimbursement of inpatient charges and fees of eligible disproportionate share

29 hospitals. Except for the payment of administrative costs as provided in this section, appropriation

30 from this fund for any other purposes is void.

§9-3-1103. Medical services trust fund.

1 (a) The Legislature finds that certain dedicated revenues should be preserved in trust for

2 the purpose of stabilizing the state's Medicaid program and providing services for future federally

3 mandated population groups in conjunction with federal reform.

4 (b) There is continued a special account within the department, which shall be an interest-

5 bearing account and may be invested in the manner permitted by §12-6-9 of this code, designated

6 the Medical Services Trust Fund. Funds paid into the account shall be derived from the following

7 sources:

8 (1) Transfers, by intergovernmental transfer, from the hospital services revenue account
9 provided in chapter 16 of this code;

10 (2) All interest or return on investment accruing to the fund;

11 (3) Any gifts, grants, bequests, transfers or donations which may be received from any
12 governmental entity or unit or any person, firm, foundation or corporation; and

13 (4) Any appropriations by the Legislature which may be made for this purpose.

14 (c) Expenditures from the fund are limited to the following:

15 (1) Payment of backlogged billings from providers of Medicaid services when cash-flow
16 problems within the medical services fund do not permit payment of providers within federally
17 required time limits; and

18 (2) Funding for services to future federally mandated population groups in conjunction with
19 federal health care reform: *Provided*, That other Medicaid funds have been exhausted for the
20 federally mandated expansion.

21 (3) Payment of the required state match for Medicaid disproportionate share payments in
22 order to receive federal financial participation in the disproportionate share hospital program.

23 (d) Expenditures from the fund solely for the purposes set forth in subsection (c) of this
24 section shall be authorized in writing by the Governor, who shall determine in his or her discretion
25 whether any expenditure shall be made, based on the best interests of the state as a whole and
26 its citizens, and shall designate the purpose of the expenditure. Upon authorization signed by the
27 Governor, funds may be transferred to the Medical Services Fund: *Provided*, That all
28 expenditures from the "Medical Services Trust Fund" shall be reported forthwith to the Joint
29 Committee on Government and Finance.

§9-3-1104. Expansion of coverage to children and terminally ill.

1 The department shall:

2 (1) Provide a streamlined application form, which shall be no longer than two pages, for
3 all families applying for medical coverage for children under any of the programs set forth in this

4 section; and

5 (2) Provide the option of hospice care to terminally ill West Virginians who otherwise
6 qualify for Medicaid.

7 (3) Accelerate the Medicaid option for coverage of Medicaid to all West Virginia children
8 whose family income is below one hundred percent of the federal poverty guideline.

§9-3-1105. Legislative reports.

1 (a) The secretary shall make an annual report to the Legislature on the use of the Medicaid
2 Uncompensated Care Fund.

3 (b) The Health Care Authority shall make an annual report to the Legislature on the impact
4 of improved Medicaid inpatient payments resulting from the fund on nongovernmental payor
5 health care costs.

PART TWELVE. MEDICAID BUY-IN PROGRAM.

§9-3-1201. Legislative findings.

1 (a) The Legislature finds that there are many individuals in this state who have disabilities
2 that qualify them for state or federal assistance and who are nonetheless willing and able to enter
3 the workforce, but do not do so out of fear of losing essential medical care. As a result, the state
4 realizes increased costs in fully supporting these disabled individuals who, in turn, suffer under
5 an additional disability of being deprived of the additional income, dignity and self-sufficiency
6 derived by being engaged in competitive employment.

7 (b) The Legislature finds that establishing a Medicaid buy-in program for certain individuals
8 with disabilities will assist them in becoming independent of medical assistance by enabling them
9 to enter the workforce without fear of losing essential medical care.

§9-3-1202. Medicaid buy-in program; funding.

1 (a) The Medicaid buy-in program for working individuals with disabilities is continued to
2 provide Medicaid benefits to individuals who are disabled and employed, as authorized pursuant

3 to Section 201 of the federal Ticket to Work and Work Incentives Improvement Act of 1999 (P.L.
4 106-170, 42 U.S.C. 1396, et seq.).

5 (b) Funding for the buy-in program shall be from funds appropriated by the Legislature,
6 premiums paid, enrollment fees and any federal matching funding available to the program.

§9-3-1203. Eligibility guidelines.

1 (a) To be eligible to participate in the buy-in program an individual shall:

2 (1) Be a resident of the State of West Virginia;

3 (2) Have a disability that is defined and determined by the Social Security Administration,
4 the department or the bureau;

5 (3) Be at least sixteen years of age but not more than sixty-four years of age;

6 (4) Be engaged in competitive employment, including self-employment or nontraditional
7 work that results in remuneration at or above minimum wage in an integrated setting;

8 (5) Have countable resources that do not exceed the resource limit for the supplemental
9 security income program;

10 (6) Have countable income that does not exceed two hundred fifty percent of the federal
11 poverty level;

12 (7) Have total countable unearned income, using the social security income program
13 methodology, that does not exceed the federal benefit rate plus the general income exclusion;

14 and

15 (8) Except as provided in this article, not have countable resources that exceed the
16 resource limits for the federal supplemental security income program.

17 (b) The secretary or commissioner shall establish a method of providing notice of the
18 availability of participation in the Medicaid buy-in program. The secretary or commissioner shall
19 develop all forms and notices necessary to implement the provisions of this article, including forms
20 for application to the program, determination of eligibility and continued participation and notices
21 that advise all eligible buy-in participants of the rights, benefits, obligations and participation

22 requirements of the program, including, but not limited to, notice of fees, premiums, premium
23 adjustments, periodic review, length of time for which benefits may be paid and disqualifying
24 factors.

§9-3-1204. Exceptions to qualifying factors.

1 (a) An individual who is enrolled in the buy-in program and who no longer meets the
2 eligibility requirements of the basic coverage group due to an improvement in the individual's
3 medical condition may continue to be eligible for Medicaid coverage under the buy-in program if
4 the individual meets the following requirements:

5 (1) The individual continues to have a severe medically determinable impairment as
6 determined by the department or the bureau and as defined and recognized by federal law;

7 (2) The individual is employed and earning a monthly wage that is not less than the federal
8 minimum hourly wage times forty;

9 (3) The individual does not have income or countable resources in excess of the limits
10 established for the basic coverage group;

11 (4) The individual is at least sixteen years of age and less than sixty-five years of age;

12 (5) The individual pays any premiums or other cost sharing required pursuant to this
13 chapter; and

14 (6) The individual meets all other eligibility requirements of this section.

15 (b) An individual who is enrolled in the buy-in program and who is unable to maintain
16 employment for involuntary reasons, including temporary leave due to a health problem or
17 involuntary termination, may continue to be eligible for Medicaid coverage under the buy-in
18 program if the individual meets the following requirements:

19 (1) Within thirty days after the date on which the individual becomes unemployed, the
20 individual, or an authorized representative of the individual, submits a written request to the office
21 that the individual's Medicaid coverage be continued;

22 (2) The individual maintains a connection to the workforce during the individual's continued

23 eligibility period by participating in at least one of the following activities:

24 (A) Enrollment in a state or federal vocational rehabilitation program;

25 (B) Enrollment or registration with the office of workforce development;

26 (C) Participation in a transition from school-to-work program;

27 (D) Participation with an approved provider of employment services;

28 (E) Provision of documentation from the individual's employer that the individual is on

29 temporary involuntary leave;

30 (F) The individual does not have income or countable resources in excess of the limits

31 established by this section;

32 (G) The individual is at least sixteen years of age and less than sixty-five years of age;

33 (H) The individual pays any premiums or other cost sharing required by this section; and

34 (I) The individual meets all other eligibility requirements of this section.

35 (c) The department or bureau shall continue Medicaid coverage under the buy-in program

36 for an individual described in subsection (b) of this section for up to six months from the date of

37 the individual's involuntary loss of employment.

38 (d) If an individual is ineligible for continued coverage under the buy-in program because

39 he or she fails to meet the requirements of subsection (b) of this section or has already fulfilled

40 twelve months of continuing eligibility, the individual shall be required to meet the eligibility

41 requirements of another available Medicaid program in order to continue to be eligible for

42 Medicaid benefits.

§9-3-1205. Fees, premiums and periodic reviews.

1 (a) The department or bureau shall charge a \$50 enrollment fee to all participants in the

2 Medicaid buy-in program. Upon payment of the enrollment fee, the first month's premium

3 payment is waived. Medicaid coverage begins on the first day of the month following payment of

4 the enrollment fee.

5 (b) The department or bureau shall develop a sliding scale of premiums for individuals

6 participating in the buy-in program. The sliding scale shall:

7 (1) Be based on the annual gross income of the individual; and

8 (2) Provide for a minimum premium of \$15 and a maximum monthly premium not to
9 exceed three and one-half percent of the individual's gross monthly income.

10 (c) Subject to the minimum and maximum amounts described in this section, the
11 department or bureau may annually adjust the scale of premiums charged for participation in the
12 Medicaid buy-in program.

13 (d) The department or bureau shall biannually review the amount of the premium that an
14 individual is required to pay pursuant to this section.

15 (e) The department or bureau may increase the premium required only after conducting a
16 review.

17 (f) The department or bureau shall decrease the premium that an eligible buy-in participant
18 is required to pay if:

19 (1) The individual notifies the office of a change in income or family size; and

20 (2) The sliding scale adopted by the department applied to the individual's changed
21 circumstances prescribes a premium for the individual that is lower than the premium the
22 individual is paying.

23 (g) The department or bureau shall establish administrative procedures regarding
24 premiums for the buy-in program, including:

25 (1) The effect of nonpayment of a premium; and

26 (2) The collection of premiums.

27 (h) The department or bureau shall establish criteria to base the biannual redetermination
28 of disability required for an individual participating in the buy-in program on the individual's
29 medical evidence, including evidence of physical or mental impairment.

30 (i) In conducting the biannual redetermination described in this section, the department or
31 bureau may not determine that an individual participating in the buy-in program is no longer

32 disabled solely on the individual's:

33 (1) Participation in employment;

34 (2) Earned income; or

35 (3) Income from self-employment.

§9-3-1206. Benefits of the Medicaid buy-in program.

1 (a) Except as otherwise provided in this article, an eligible buy-in participant shall receive
2 the same benefits that he or she would otherwise receive as a recipient of Medicaid benefits,
3 including home health care services.

4 (b) Except as otherwise provided in this article, an eligible buy-in participant is subject to
5 the same obligations and requirements, including cost sharing, that he or she would otherwise be
6 subject to as recipient of Medicaid benefits.

§9-3-1207. Analytical criteria and reporting requirements.

1 (a) The secretary or commissioner shall establish criteria to determine the effectiveness
2 of the Medicaid buy-in program and continued Medicaid coverage through Section 1619 of the
3 federal Social Security Act (42 U.S.C. §1382h). The criteria shall include an analysis of the
4 following:

5 (1) The number of individuals with disabilities who are:

6 (A) Enrolled in the buy-in program; or

7 (B) Receiving Medicaid through Section 1619 of the federal Social Security Act (42 U.S.C.
8 §1382h);

9 (2) The amount of state revenues resulting from premiums paid by participants in the buy-
10 in program; and

11 (3) The amount of state costs incurred as a result of implementing the buy-in program,
12 including administrative costs and costs of providing services.

13 (b) In addition to the criteria required pursuant to this section, the secretary may establish
14 criteria to determine the following:

15 (1) Comparative costs of Medicaid funded services for participants in the buy-in program
16 and work incentives created through Section 1619 of the federal Social Security Act (42 U.S.C.
17 §1382h) before and after employment;

18 (2) The number of supplemental security income and social security disability insurance
19 recipients in West Virginia who are no longer dependent on, or who have reduced dependence
20 on, public assistance or health care entitlement services, other than Medicaid or the Children's
21 Health Insurance Program, due to participation in the buy-in program or work incentives created
22 through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h);

23 (3) The number of individuals with severe disabilities who are no longer dependent on, or
24 who have reduced dependence on, public benefits or services, other than Medicaid or the
25 Children's Health Insurance Program, due to income or support services received through
26 participation in the buy-in program or work incentives created through Section 1619 of the federal
27 Social Security Act (42 U.S.C. §1382h); and

28 (4) The change in the number of buy-in program participants or participants in work
29 incentives created through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h)
30 who have health care needs and related services covered through employer based benefit
31 programs.

32 (c) In evaluating the effectiveness of the state's work incentives initiatives for individuals
33 with disabilities, the secretary or commissioner:

34 (1) Shall collaborate with other state agencies on data collection; and

35 (2) May consult with an independent contractor to collect data on the criteria required by
36 this section.

37 (d) The department, the bureau, secretary and commissioner shall provide an annual
38 report of its evaluation of the Medicaid buy-in program performed pursuant to the requirements of
39 this section to the Joint Committee on Government and Finance no later than December 31 of
40 each year.

§9-3-1208. Advisory council; rulemaking.

1 (a) The secretary or commissioner shall establish a Medicaid buy-in program advisory
2 council, consisting of representatives from the state Medicaid agency, the state rehabilitation
3 agency, the Bureau of Child and Family Services, the West Virginia Statewide Independent Living
4 Council, the West Virginia State Rehabilitation Council, the West Virginia Developmental
5 Disabilities Council, the West Virginia Mental Health Planning Council and the Center for
6 Excellence in Disabilities at West Virginia University.

7 (b) The secretary or commissioner shall submit legislative rules for review and input to the
8 advisory council prior to release for public comment and shall consider any recommendations of
9 the advisory council before adopting final rules.

10 (c) The secretary or commissioner shall propose legislative rules for legislative approval
11 in accordance with the provisions of §29A-3-1 et seq. of this code as may be needed to administer
12 and maintain the Medicaid buy-in program.

PART THIRTEEN. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.**§9-3-1301. Medicaid Fraud Control Unit; powers and duties.**

1 The Medicaid Fraud Control Unit shall be continued and shall have the following powers
2 and duties:

3 (1) The investigation and referral for prosecution of all violations of applicable state and
4 federal laws pertaining to the provision of goods or services under the medical programs of the
5 state including the Medicaid program.

6 (2) The investigation of abuse, neglect or financial exploitation of residents in board and
7 care facilities and patients in health care facilities which receive payments under the medical
8 programs of the state.

9 (3) To cooperate with the federal government in all programs designed to detect and deter
10 fraud and abuse in the medical programs of the state.

11 (4) To cooperate with the federal government to detect and deter fraud and abuse in the
12 medical programs of the state.

13 (5) To employ and train personnel to achieve the purposes of this article and to employ
14 legal counsel, investigators, Auditors and clerical support personnel and other personnel as are
15 deemed necessary from time to time to accomplish the purposes herein.

§9-3-1302. Investigations; procedure.

1 (a) When the unit has credible information that indicates a person has engaged in an act
2 or activity which is subject to prosecution under this article, the unit may make an investigation to
3 determine if the act has been committed and, to the extent necessary for that purpose, the
4 secretary, or an employee of the unit designated by the secretary, may administer oaths or
5 affirmations and issue subpoenas for witnesses and documents relevant to the investigation,
6 including information concerning the existence, description, nature, custody, condition and
7 location of any book, record, documents or other tangible thing and the identity and location of
8 persons having knowledge of relevant facts or any matter reasonably calculated to lead to the
9 discovery of admissible evidence.

10 (b) When the unit has probable cause to believe that a person has engaged in an act or
11 activity which is subject to prosecution pursuant to this article, or §61-2-29 of this code, either
12 before, during, or after an investigation pursuant to this section, the secretary, or an employee of
13 the unit designated by the secretary, may request search warrants and present and swear or
14 affirm criminal complaints.

15 (c) If documents necessary to an investigation of the unit shall appear to be located outside
16 the state, such documents shall be made available by the person or entity within the jurisdiction
17 of the state having control over such documents either at a convenient location within the state
18 or, upon payment of reasonable and necessary expenses to the unit for transportation and
19 inspection, at the place outside the state where such documents are maintained.

20 (d) Upon failure of a person to comply with a subpoena or subpoena duces tecum or failure

21 of a person to give testimony without lawful excuse and upon reasonable notice to all persons
22 affected thereby, the unit may apply to the circuit court of the county in which compliance is sought
23 for appropriate orders to compel obedience with the provisions of this section.

24 (e) The unit shall not make public the name or identity of a person whose acts or conduct
25 is investigated pursuant to this section or the facts disclosed in the investigation except as the
26 same may be used in any legal action or enforcement proceeding brought pursuant to this article
27 or any other provision of this code.

§9-3-1303. Agency lawyers assisting prosecutors.

1 Attorneys employed and assigned to the Medicaid Fraud Control Unit created by the
2 provisions of this article shall cooperate in investigations to deter fraud and abuse with are
3 conducted by the Inspector General created pursuant to the provisions of this chapter and shall
4 assist the Attorney General and prosecuting attorneys in the prosecution of criminal violations of
5 this article.

§9-3-1304. Applications for medical assistance; false statements or representations;
criminal penalties.

1 (a) A person shall not knowingly make or cause to be made a false statement or false
2 representation of any material fact in an application for medical assistance under the medical
3 programs of the department.

4 (b) A person shall not knowingly make or cause to be made a false statement or false
5 representation of any material fact necessary to determine the rights of any other person to
6 medical assistance under the medical programs of the department.

7 (c) A person shall not knowingly and intentionally conceal or fail to disclose any fact with
8 the intent to obtain medical assistance under the medical programs of the department to which
9 the person or any other person is not entitled.

10 (d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty
11 of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than

12 one nor more than ten years, or shall be fined not to exceed \$10,000 or both fined and imprisoned.

§9-3-1305. Bribery; false claims; conspiracy; criminal penalties.

1 (a) A person shall not solicit, offer, pay, or receive any unlawful remuneration, including
2 any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of
3 moneys from the Medical Services Fund established pursuant to this chapter, which is not
4 authorized by applicable laws or rules and regulations.

5 (b) A person shall not make or present or cause to be made or presented to the department
6 a claim under the medical programs of the department knowing the claim to be false, fraudulent
7 or fictitious.

8 (c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid
9 another to obtain the payment or allowance of a false, fraudulent or fictitious claim under the
10 medical programs of the department.

11 (d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty
12 of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than
13 one nor more than ten years or shall be fined not to exceed \$10,000, or both fined and imprisoned.

§9-3-1306. Venue for criminal offenses.

1 In addition to other venues permitted by state law, a criminal prosecution pursuant to this
2 article may be commenced in the circuit court of Kanawha County or of any county in which:

3 (1) The defendant is conducting business; or

4 (2) Any of the conduct constituting a violation of any provision of this article has occurred.

§9-3-1307. Civil remedies.

1 (a) Any person, firm, corporation or other entity which willfully, by means of a false
2 statement or representation, or by concealment of any material fact, or by other fraudulent
3 scheme, devise or artifice on behalf of himself, herself, it's or others, obtains or attempts to obtain
4 benefits or payments or allowances under the medical programs of the department to which he
5 or she is not entitled, or, in a greater amount than that to which he or she is entitled, shall be liable

6 to the department in an amount equal to three times the amount of such benefits, payments or
7 allowances to which he or she is not entitled, and shall be liable for the payment of reasonable
8 attorney fees and all other fees and costs of litigation.

9 (b) No criminal action or indictment need be brought against any person, firm, corporation
10 or other entity as a condition for establishing civil liability hereunder.

11 (c) A civil action pursuant to this section may be prosecuted and maintained on behalf of
12 the department by the Attorney General and the Attorney General's assistants or a prosecuting
13 attorney and the prosecuting attorney's assistants or by any attorney in contract with or employed
14 by the department to provide such representation.

§9-3-1308. Liability of employees of the department.

1 There is no civil liability on the part of, and no cause of action shall arise against the
2 secretary, the department, its employees or its agents for any action taken by them in good faith
3 and in the lawful performance of their powers and duties pursuant to this article.

§9-3-1309. Licensing of vehicles for use by the Medicaid fraud control unit.

1 For purposes of the responsibilities assigned the unit pursuant to this article, personnel of
2 the unit shall be permitted to operate vehicles owned or leased for the state displaying Class A
3 registration plates.

§9-3-1310. Remedies and penalties not exclusive.

1 The remedies and penalties provided in this article governing the operation of the medical
2 programs of the department are in addition to those remedies and penalties provided elsewhere
3 by law.

PART FOURTEEN. ASSIGNMENT OF RIGHTS.

§9-3-1401. Assignment of rights.

1 (a) Submission of an application to the department for medical assistance is, as a matter
2 of law, an assignment of the right of the applicant or his or her legal representative to recover

3 from third parties past medical expenses paid for by the Medicaid program.

4 (b) At the time an application for medical assistance is made, the department shall include
5 a statement along with the application that explains that the applicant has assigned all of his or
6 her rights as provided in this section and the legal implications of making this assignment.

7 (c) This assignment of rights does not extend to Medicare benefits.

8 (d) This section does not prevent the recipient or his or her legal representative from
9 maintaining an action for injuries or damages sustained by the recipient against any third-party
10 and from including, as part of the compensatory damages sought to be recovered, the amounts
11 of his or her past medical expenses.

12 (e) The department shall be legally subrogated to the rights of the recipient against the
13 third party.

14 (f) The department shall have a priority right to be paid first out of any payments made to
15 the recipient for past medical expenses before the recipient can recover any of his or her own
16 costs for medical care.

17 (g) A recipient is considered to have authorized all third-parties to release to the
18 department information needed by the department to secure or enforce its rights as assignee
19 pursuant to this chapter.

§9-3-1402. Notice requirement for claims and civil actions.

1 (a) A recipient's legal representative shall provide notice to the department within 60 days
2 of asserting a claim against a third party. If the claim is asserted in a formal civil action, the
3 recipient's legal representative shall notify the department within 60 days of service of the
4 complaint and summons upon the third party by causing a copy of the summons and a copy of
5 the complaint to be served on the department as though it were named a party defendant.

6 (b) If the recipient has no legal representative and the third party knows or reasonably
7 should know that a recipient has no representation then the third party shall provide notice to the
8 department within sixty days of receipt of a claim or within thirty days of receipt of information or

9 documentation reflecting the recipient is receiving Medicaid benefits, whichever is later in time.

10 (c) In any civil action implicated by this section, the department may file a notice of
11 appearance and shall thereafter have the right to file and receive pleadings, intervene and take
12 other action permitted by law.

13 (d) The department shall provide the recipient and the third party, if the recipient is without
14 legal representation, notice of the amount of the purported subrogation lien within thirty days of
15 receipt of notice of the claim. The department shall provide related supplements in a timely
16 manner, but no later than fifteen days after receipt of a request for same.

§9-3-1403. Notice of settlement requirement.

1 (a) A recipient or his or her representative shall notify the department of a settlement with
2 a third-party and retain in escrow an amount equal to the amount of the subrogation lien asserted
3 by the department. The notification shall include the amount of the settlement being allocated for
4 past medical expenses paid for by the Medicaid program. Within 30 days of the receipt of any
5 such notice, the department shall notify the recipient of its consent or rejection of the proposed
6 allocation. If the department consents, the recipient or his or her legal representation shall issue
7 payment out of the settlement proceeds in a manner directed by the secretary or his or her
8 designee within 30 days of consent to the proposed allocation.

9 (b) If the total amount of the settlement is less than the department's subrogation lien, then
10 the settling parties shall obtain the department's consent to the settlement before finalizing the
11 settlement. The department shall advise the parties within 30 days and provide a detailed
12 itemization of all past medical expenses paid by the department on behalf of the recipient for
13 which the department seeks reimbursement out of the settlement proceeds.

14 (c) If the department rejects the proposed allocation, the department shall seek a judicial
15 determination within 30 days and provide a detailed itemization of all past medical expenses paid
16 by the department on behalf of the recipient for which the department seeks reimbursement out
17 of the settlement proceeds.

18 (1) If judicial determination becomes necessary, the trial court is required to hold an
19 evidentiary hearing. The recipient and the department shall be provided ample notice of the same
20 and be given just opportunity to present the necessary evidence, including fact witness and expert
21 witness testimony, to establish the amount to which the department is entitled to be reimbursed
22 pursuant to this section.

23 (2) The department shall have the burden of proving by a preponderance of the evidence
24 that the allocation agreed to by the parties was improper. For purposes of appeal, the trial court's
25 decision should be set forth in a detailed order containing the requisite findings of fact and
26 conclusions of law to support its rulings.

27 (d) Any settlement by a recipient with one or more third-parties which would otherwise fully
28 resolve the recipient's claim for an amount collectively not to exceed \$20,000 shall be exempt
29 from the provisions of this section.

30 (e) Nothing herein prevents a recipient from seeking judicial intervention to resolve any
31 dispute as to allocation prior to effectuating a settlement with a third party.

§9-3-1404. Department failure to respond to notice of settlement.

1 If the department fails to appropriately respond to a notification of settlement, the amount
2 to which the department is entitled to be paid from the settlement shall be limited to the amount
3 of the settlement the recipient has allocated toward past medical expenses.

§9-3-1405. Penalty for failure to notify the department.

1 A legal representative acting on behalf of a recipient or third party that fails to comply with
2 the provisions of this section is liable to the department for all reimbursement amounts the
3 department would otherwise have been entitled to collect pursuant to this section but for the failure
4 to comply. Under no circumstances may a pro se recipient be penalized for failing to comply with
5 the provisions of this section.

§9-3-1406. Miscellaneous provisions relating to trial.

1 (a) Where an action implicated by this section is tried by a jury, the jury may not be

2 informed at any time as to the subrogation lien of the department.

3 (b) Where an action implicated by this section is tried by judge or jury, the trial judge shall,
4 or in the instance of a jury trial, require that the jury, identify precisely the amount of the verdict
5 awarded that represents past medical expenses.

6 (c) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction
7 of the judgment any damages awarded for past medical expenses be withheld and paid directly
8 to the department, not to exceed the amount of past medical expenses paid by the department
9 on behalf of the recipient.

§9-3-1407. Attorneys' fees.

1 Irrespective of whether an action or claim is terminated by judgment or settlement without
2 trial, from the amount required to be paid to the department there shall be deducted the
3 reasonable costs and attorneys' fees attributable to the amount in accordance with, and in
4 proportion to, the fee arrangement made between the recipient and his or her attorney of record
5 so that the department shall bear the pro-rata share of the reasonable costs and attorneys' fees.
6 If there is no recovery, the department shall under no circumstances be liable for any costs or
7 attorneys' fees expended in the matter.

§9-3-1408. Class actions and multiple plaintiff actions not authorized.

1 Nothing in this article shall authorize the department to institute a class action or multiple
2 plaintiff action against any manufacturer, distributor or vendor of any product to recover medical
3 care expenditures paid for by the Medicaid program.

§9-3-1409. Secretary's authority.

1 The secretary or his or her designee may compromise, settle and execute a release of
2 any claim relating to the department's right of subrogation, in whole or in part.

§9-3-1410. Notice of action or claim.

1 (a) If either the recipient or the department brings an action or claim against a third person,
2 the recipient, his or her attorney or the department shall, within thirty days of filing the action, give

3 to the other written notice of the action or claim by certified mail. This notice shall contain the
4 name of the third person and the court in which the action is brought.

5 (b) If the department institutes said action, the notice shall advise the recipient of their right
6 to bring such action in their own name, in which they may include as a part of their claim the sums
7 claimed by the department.

8 (c) Proof of the notice shall be filed in said action subject to the notice and intent procedure
9 as outlined in this article. If an action or claim is brought by either the recipient or the department,
10 the other may, at any time before trial, become a party to the action, or shall consolidate his or
11 her action or claim with the other if brought independently: *Provided*, That this consolidation or
12 entry as a party does not delay the proceedings.

§9-3-1411. Release of information.

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

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

11 (1) Upon the request of the bureau, or its contractor, provide information to determine the
12 period that the service recipients, their spouse or dependents may be or may have been covered
13 by the health insurer, including the nature of the coverage that is or was provided by the health
14 insurer, the name, address, date of birth, Social Security number, group number, identifying
15 number of the plan, and effective and termination dates. The information shall be provided in a

16 format suitable for electronic data matches, conducted under the direction of the bureau no less
17 than monthly or as prescribed by the secretary or the commissioner. The health insurer must
18 respond within sixty working days after receipt of a written request for enrollment data from the
19 department, the bureau or its contractor;

20 (2) Accept the right of the bureau of recovery and the assignment to the state of any right
21 of an individual or other entity to payment from the party for an item or service for which payment
22 has been made by the bureau;

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

26 (4) Accept a claim submitted by the bureau regardless of the date of submission of the
27 claim, the type or format of the claim form, lack of preauthorization or the failure to present proper
28 documentation at the point-of-sale that is the basis of the claim. The claim shall be submitted by
29 the bureau within the three-year period beginning on the date on which the item or service was
30 furnished and any action by the bureau to enforce its right with respect to the claim shall be
31 commenced within six years of the bureau submission of the claim.

§9-3-1412. Right of the department to recover medical assistance.

1 (a) Upon the death of a person who was fifty-five years of age or older at the time the
2 person received assistance consisting of nursing facility services, home and community-based
3 services, and related hospital and prescription drug services, the department, in addition to any
4 other available remedy, may file a claim or lien against the estate of the recipient for the total
5 amount of medical assistance provided by Medicaid for nursing facility services, home and
6 community-based services, and related hospital and prescription drug services provided for the
7 benefit of the recipient. Claims so filed shall be classified as, and included in, the class of debts
8 due the state.

9 (b) The department may recover pursuant to subsection (a) only after the death of the

10 individual's surviving spouse, if any and only after such time as the individual has no surviving
11 children under the age of twenty-one, or when the individual has no surviving children who meet
12 the Social Security Act's definition of blindness or permanent and total disability.

13 (c) The state shall have the right to place a lien upon the property of individuals who are
14 inpatients in a nursing facility, intermediate care facility for individuals with an intellectual disability
15 or other medical institution who, after notice and an opportunity for a hearing, the state has
16 deemed to be permanently institutionalized. This lien shall be in an amount equal to Medicaid
17 expenditures for services provided by a nursing facility, intermediate care facility for individuals
18 with an intellectual disability or other medical institution, and shall be rendered against the
19 proceeds of the sale of property except for a minimal amount reserved for the individual's personal
20 needs. Any such lien dissolves upon that individual's discharge from the medical institution. The
21 secretary has authority to compromise or otherwise reduce the amount of this lien in cases where
22 enforcement would create a hardship.

23 (d) No lien may be imposed on an individual's home when the home is the lawful residence
24 of:

25 (1) The spouse of the individual;

26 (2) The individual's child who is under the age of twenty-one;

27 (3) The individual's child meets the Social Security Act's definition of blindness or
28 permanent and total disability; or

29 (4) The individual's sibling has an equity interest in the home and was residing in the home
30 for a period of at least one year immediately before the date of the individual's admission to a
31 medical institution.

32 (e) The filing of a claim, pursuant to this section, neither reduces or diminishes the general
33 claims of the department, except that the department may not receive double recovery for the
34 same expenditure. The death of the recipient neither extinguishes or diminishes any right of the
35 department to recover. Nothing in this section affects or prevents a proceeding to enforce a lien

36 pursuant to this section or a proceeding to set aside a fraudulent conveyance.

37 (f) Any claim or lien imposed pursuant to this section is effective for the full amount of
38 medical assistance provided by Medicaid for nursing facility services, home and community-
39 based services, and related hospital and prescription drug services. The lien attaches and is
40 perfected automatically as of the beginning date of medical assistance, the date when a recipient
41 first receives treatment for which the department may be obligated to provide medical assistance.
42 A claim may be waived by the department, if the department determines, pursuant to applicable
43 federal law and rules and regulations, that the claim will cause substantial hardship to the
44 surviving dependents of the deceased.

PART FIFTEEN. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§9-3-1501. Expansion of health care coverage to children; creation of program; legislative directives.

1 (a) It is the intent of the Legislature to expand access to health services for eligible children
2 and to pay for this coverage by using private, state and federal funds to purchase those services
3 or purchase insurance coverage for those services. To achieve this intention, the West Virginia
4 Children's Health Insurance Program is created subject to federal funding. The program shall be
5 administered by the Bureau for Medical Services within the Department of Human Services in
6 accordance with the provisions of this article and the applicable provisions of Title XXI of the
7 Social Security Act of 1997. Participation in the program may be made available to families of
8 eligible children, subject to eligibility criteria and processes to be established, which does not
9 create an entitlement to coverage in any person. Nothing in this article requires any appropriation
10 of State General Revenue Funds for the payment of any benefit provided in this article. In the
11 event that this article conflicts with the requirements of federal law, federal law governs.

12 (b) In developing a Children's Health Insurance Program that operates with the highest
13 degree of simplicity and governmental efficiency, the board shall avoid duplicating functions

14 available in existing agencies and may enter into interagency agreements for the performance of
15 specific tasks or duties at a specific or maximum contract price.

16 (c) In developing benefit plans, the board may consider any cost savings, administrative
17 efficiency or other benefit to be gained by considering existing contracts for services with state
18 health plans and negotiating modifications of those contracts to meet the needs of the program.

19 (d) In order to enroll as many eligible children as possible in the program created by this
20 article and to expedite the effective date of their health insurance coverage, the board shall
21 develop and implement a plan whereby applications for enrollment may be taken at any primary
22 care center or other health care provider, as determined by the director, and transmitted
23 electronically to the program's offices for eligibility screening and other necessary processing.
24 The board may use any funds available to it in the development and implementation of the plan,
25 including grant funds or other private or public moneys.

§9-3-1502. Reporting requirements.

1 (a) Annually on January 1, the director shall report to the Governor and the Legislature
2 regarding the number of children enrolled in the program or programs; the average annual cost
3 per child per program; the estimated number of remaining uninsured children; and the outreach
4 activities for the previous year. The report shall include any information that can be obtained
5 regarding the prior insurance and health status of the children enrolled in programs created
6 pursuant to this article. The report shall include information regarding the cost, quality and
7 effectiveness of the health care delivered to enrollees of this program; satisfaction surveys; and
8 health status improvement indicators. The agency, in conjunction with other state health and
9 insurance agencies, shall develop indicators designed to measure the quality and effectiveness
10 of children's health programs, which information shall be included in the annual report.

11 (b) On a quarterly basis, the director shall provide reports to the Legislative Oversight
12 Commission on Health and Human Resources Accountability on the number of children served,
13 including the number of newly enrolled children for the reporting period and current projections

14 for future enrollees; outreach efforts and programs; statistical profiles of the families served and
15 health status indicators of covered children; the average annual cost of coverage per child; the
16 total cost of children served by provider type, service type and contract type; outcome measures
17 for children served; reductions in uncompensated care; performance with respect to the financial
18 plan; and any other information as the Legislative Oversight Commission on Health and Human
19 Resources Accountability may require.

§9-3-1503. Children's health policy board created; qualifications and removal of members;
powers; duties; meetings; and compensation.

1 (a) There is hereby created the West Virginia children's health insurance board, which
2 shall consist of the director of the Public Employees Insurance Agency, the Secretary of Human
3 Services, or his or her designee, and six citizen members appointed by the Governor, one of
4 whom shall represent children's interests and one of whom shall be a certified public accountant,
5 to assume the duties of the office immediately upon appointment, pending the advice and consent
6 of the Senate. A member of the Senate, as appointed by the Senate president and a member of
7 the House of Delegates, as appointed by the Speaker of the House of Delegates, shall serve as
8 nonvoting members.

9 (b) Of the five citizen members first appointed, one shall serve one year, two shall serve
10 two years and two shall serve three years. All subsequent appointments shall be for terms of three
11 years, except that an appointment to fill a vacancy shall be for the unexpired term only: *Provided,*
12 That the citizen member to be appointed upon the reenactment of this section during the regular
13 session of the Legislature, two thousand eighteen, shall serve a term which corresponds to the
14 term of the member initially appointed to serve one year. Three of the citizen members shall have
15 at least a bachelor's degree and experience in the administration or design of public or private
16 employee or group benefit programs and the children's representative shall have experience that
17 demonstrates knowledge in the health, educational and social needs of children.

18 (c) No more than three citizen members may be members of the same political party and

19 no board member shall represent or have a pecuniary interest in an entity reasonably expected
20 to compete for contracts under this article. Members of the board shall assume the duties of the
21 office immediately upon appointment.

22 (d) The director of the agency shall serve as the chairperson of the board. No member
23 may be removed from office by the Governor except for official misconduct, incompetence,
24 neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article or
25 gross immorality. Vacancies in the board shall be filled in the same manner as the original
26 appointment.

27 (e) The purpose of the board is to develop plans for health services or health insurance
28 that are specific to the needs of children and to bring fiscal stability to this program through
29 development of an annual financial plan designed in accordance with the provisions of this article.

30 (f) Notwithstanding any other provisions of this code to the contrary, any insurance
31 benefits offered as a part of the programs designed by the board are exempt from the minimum
32 benefits and coverage requirements of §33-15 -1 et seq. and §33-16-1 et seq. of this code.

33 (g) The board may consider adopting the maximum period of continuous eligibility
34 permitted by applicable federal law, regardless of changes in a family's economic status, so long
35 as other group insurance does not become available to a covered child.

36 (h) The board shall meet at the time and place as specified by the call of the chairperson
37 or upon the written request to the chairperson by at least two members. Notice of each meeting
38 shall be given in writing to each member by the chairperson at least three days in advance of the
39 meeting. Four voting members shall constitute a quorum.

40 (i) For each day or portion of a day spent in the discharge of duties pursuant to this article,
41 the board shall pay each of its citizen members the same compensation and expense
42 reimbursement as is paid to members of the Legislature for their interim duties.

§9-3-1504. Director of the Children's Health Insurance Program; qualifications; powers and
duties.

1 (a) An agency director shall be appointed by the Governor, with the advice and consent
2 of the Senate, and shall be responsible for the implementation, administration and management
3 of the Children's Health Insurance Program created under this article. The director shall have at
4 least a bachelor's degree and a minimum of three years' experience in health insurance
5 administration. The Director shall report directly to the Commissioner of the Bureau for Medical
6 Services as set forth in this article.

7 (b) The director shall employ any administrative, technical and clerical employees that are
8 required for the proper administration of the program and for the work of the board. He or she
9 shall present recommendations and alternatives for the design of the annual plans and other
10 actions undertaken by the board in furtherance of this article.

11 (c) The director is responsible for the administration and management of the program and
12 has the power and authority to make all rules necessary to effectuate the provisions of this article.
13 Nothing in this article may be construed as limiting the director's otherwise lawful authority to
14 manage the program on a day-to-day basis.

15 (d) The director has exclusive authority to execute any contracts that are necessary to
16 effectuate the provisions of this article: *Provided*, That the board shall approve all contracts for
17 the provision of services or insurance coverage under the program. The provisions of §5A-3-1 *et*
18 *seq.* of this code, relating to the division of purchasing of the department of finance and
19 administration, shall not apply to any contracts for any health insurance coverage, health services,
20 or professional services authorized to be executed under the provisions of this article: *Provided*,
21 *however*, That before entering into any contract the director shall invite competitive bids from all
22 qualified entities and shall deal directly with those entities in presenting specifications and
23 receiving quotations for bid purposes. The director shall award those contracts on a competitive
24 basis taking into account the experience of the offering agency, corporation, insurance company
25 or service organization. Before any proposal to provide benefits or coverage under the plan is
26 selected, the offering agency, corporation, insurance company or service organization shall

27 provide assurances of utilization of essential community health service providers to the greatest
28 extent practicable. In evaluating these factors, the director may employ the services of
29 independent, professional consultants. The director shall then award the contracts on a
30 competitive basis.

31 (e) The director shall issue requests for proposals on a regional or statewide basis from
32 essential community health service providers for defined portions of services under the children's
33 health insurance plan and shall, to the greatest extent practicable, either contract directly with, or
34 require participating providers to contract with, essential community health service providers to
35 provide the services under the plan.

36 (f) Subject to the advice and consent of the board, the director may require reinsurance of
37 primary contracts, as contemplated in the provisions of §33-4-15 and §33-4-15a of this code.

§9-3-1505. Financial plans requirements.

1 (a) *Benefit plan design.* -- All financial plans required by this section shall establish: (1)
2 The design of a benefit plan or plans; (2) the maximum levels of reimbursement to categories of
3 health care providers; (3) any cost containment measures for implementation during the
4 applicable fiscal year; and (4) the types and levels of cost to families of covered children. To the
5 extent compatible with simplicity of administration, fiscal stability and other goals of the program
6 established in this article, the financial plans may provide for different levels of costs based on
7 ability to pay.

8 (b) *Actuary requirements.* — Any financial plan, or modifications, approved or proposed
9 by the board shall be submitted to and reviewed by an actuary before final approval. The financial
10 plan shall be submitted to the Governor and the Legislature with the actuary's written professional
11 opinion that all estimated program and administrative costs of the agency under the plan,
12 including incurred but unreported claims, will not exceed ninety percent of the funding available
13 to the program for the fiscal year for which the plan is proposed and that the financial plan allows
14 for no more than thirty days of accounts payable to be carried over into the next fiscal year. This

15 actuarial requirement is in addition to any requirement imposed by Title XXI of the Social Security
16 Act of 1997.

17 (c) Annual plans. -- The board shall review implementation of its current financial plan in
18 light of actual experience and shall prepare an annual financial plan for each fiscal year during
19 which the board remains in existence. For each fiscal year, the Governor shall provide an estimate
20 of requested appropriations and total funding available to the board no later than October 15,
21 preceding the fiscal year. The board shall afford interested and affected persons an opportunity
22 to offer comment on the plan at a public meeting of the board and, in developing any proposed
23 plan under this article, shall solicit comments in writing from interested and affected persons. The
24 board shall submit its final, approved financial plan, subject to the actuarial requirements of this
25 article, to the Governor and to the Legislature no later than January 1, preceding the fiscal year.
26 The financial plan for a fiscal year becomes effective and shall be implemented by the director on
27 July 1, of that fiscal year. Annual plans developed pursuant to this subsection are subject to the
28 provisions of subsections (a) and (b) of this section and the following guidelines:

29 (1) The aggregate actuarial value of the plan established as the benchmark plan should
30 be considered as a targeted maximum or limitation in developing the benefits package;

31 (2) All estimated program and administrative costs, including incurred but not reported
32 claims, shall not exceed ninety percent of the funding available to the program for the applicable
33 fiscal year; and

34 (3) The state's interest in achieving health care services for all its children at less than two
35 hundred percent of the federal poverty guideline shall take precedence over enhancing the
36 benefits available under this program.

37 (d) The provisions of chapter 29A of this code do not apply to the preparation, approval
38 and implementation of the financial plans required by this section.

39 (e) The board shall meet no less than once each quarter to review implementation of its
40 current financial plan and, using actuarial data, shall make those modifications to the plan that

41 are necessary to ensure its fiscal stability and effectiveness of service. The board may not
42 increase the types and levels of cost to families of covered children during its quarterly review
43 except in the event of a true emergency. The board may not expand the population of children to
44 whom the program is made available except in its annual plan: *Provided*, That upon the effective
45 date of this article, the board may expand coverage to any child eligible under the provisions of
46 Title XXI of the Social Security Act of 1997: *Provided, however*, That the board shall implement
47 cost-sharing provisions for children who may qualify for such expanded coverage and whose
48 family income exceeds one hundred fifty percent of the federal poverty guideline. Such cost-
49 sharing provisions may be imposed through any one or a combination of the following: enrollment
50 fees, premiums, copayments and deductibles.

51 (f) The board may develop and implement programs that provide for family coverage
52 and/or employer subsidies within the limits authorized by the provisions of Title XXI of the Social
53 Security Act of 1997 or the federal regulations promulgated thereunder: *Provided*, That any family
54 health insurance coverage offered by or through the program shall be structured so that the board
55 assumes no financial risk: *Provided, however*, That families covered by any insurance offered by
56 or through the program shall be subject to cost-sharing provisions which may include, without
57 limitation, enrollment fees, premiums, copayments and/or deductibles, as determined by the
58 board, which shall be based on ability to pay: *Provided further*, That enrollment fees or premiums,
59 if imposed, may be paid, in whole or in part, through employer subsidies or other private funds or
60 public funds, subject to availability, all as allowed by applicable state and federal law.

61 (g) For any fiscal year in which legislative appropriations differ from the Governor's
62 estimate of general and special revenues available to the agency, the board shall, within thirty
63 days after passage of the budget bill, make any modifications to the plan necessary to ensure
64 that the total financial requirements of the agency for the current fiscal year are met.

§9-3-1506. Coverage for patient cost of clinical trials.

1 (a) The provisions of this section apply to the health plans regulated by this part.

2 (b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the
3 Social Security Act.

4 (c) A policy, plan or contract subject to this section shall provide coverage for patient cost
5 to a member in a clinical trial, as a result of:

6 (1) Treatment provided for a life-threatening condition; or

7 (2) Prevention of, early detection of or treatment studies on cancer.

8 (d) The coverage under subsection (c) of this section is required if:

9 (1)(A) The treatment is being provided or the studies are being conducted in a Phase II,
10 Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or

11 (B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for
12 any other life-threatening condition and has therapeutic intent;

13 (2) The treatment is being provided in a clinical trial approved by:

14 (A) One of the national institutes of health;

15 (B) An NIH cooperative group or an NIH center;

16 (C) The FDA in the form of an investigational new drug application or investigational device
17 exemption;

18 (D) The federal department of Veterans Affairs; or

19 (E) An institutional review board of an institution in the state which has a multiple project
20 assurance contract approved by the office of protection from research risks of the national
21 institutes of health;

22 (3) The facility and personnel providing the treatment are capable of doing so by virtue of
23 their experience, training and volume of patients treated to maintain expertise;

24 (4) There is no clearly superior, noninvestigational treatment alternative;

25 (5) The available clinical or preclinical data provide a reasonable expectation that the
26 treatment will be more effective than the noninvestigational treatment alternative;

27 (6) The treatment is provided in this state: *Provided, That, if the treatment is provided*

28 outside of this state, the treatment must be approved by the payor designated in subsection (a)
29 of this section;

30 (7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles
31 and is otherwise subject to all restrictions and obligations of the health plan; and

32 (8) Reimbursement for treatment by an out of network or noncontracting provider shall be
33 reimbursed at a rate which is no greater than that provided by an in network or contracting
34 provider. Coverage shall not be required if the out of network or noncontracting provider will not
35 accept this level of reimbursement.

36 (e) Payment for patient costs for a clinical trial is not required by the provisions of this
37 section, if:

38 (1) The purpose of the clinical trial is designed to extend the patent of any existing drug,
39 to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage
40 relating to additional clinical indications for an existing drug; or

41 (2) The purpose of the clinical trial is designed to keep a generic version of a drug from
42 becoming available on the market; or

43 (3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or
44 repackaged version of an existing drug.

45 (f) Any provider billing a third party payor for services or products provided to a patient in
46 a clinical trial shall provide written notice to the payor that specifically identifies the services as
47 part of a clinical trial.

48 (g) Notwithstanding any provision in this section to the contrary, coverage is not required
49 for Phase I of any clinical trial.

§9-3-1507. Modified benefit plan for children of families of low income between two
hundred and three hundred percent of the poverty level.

1 The Legislature finds:

2 (1) That there exists a number of families of low to moderate income without access to

3 affordable health insurance coverage, whose children are denied plan participation because their
4 family income exceeds two hundred percent of the federal poverty level;

5 (2) That this exclusion imposes a heavy burden on many families by forcing them to elect
6 whether to spend money on their children's health care or for their food, clothing and educational
7 needs;

8 (3) That a plan should be developed and considered whereby children in families with an
9 income between two hundred and three hundred percent of the federal poverty level would
10 contribute approximately twenty to twenty-five percent of the actual cost of coverage resulting in
11 no additional cost to state government; and

12 (4) (A) That, while the primary goal of any plan will be the improvement of health care for
13 these children, a successful plan for extending this coverage will benefit the state by improving
14 the economy by allowing parents of these children to spend more for goods and services and by
15 lowering future medical expenditures, uncompensated care and the other long-term adverse
16 economic effects related to having a segment of the adult population which has been deprived of
17 adequate medical care during childhood.

18 (B) The board is directed to conduct a study of all available means to develop a viable,
19 modified plan to enroll the children of those families having a level of income between two hundred
20 and three hundred percent of the federal poverty level and to consider that such a plan should
21 charge an affordable premium and may be phased in over a two-year period.

22 (C) The board is further directed to study total program costs related to the implementation
23 of a viable modified plan to expand coverage with the design requiring no additional state dollars
24 and to study the long-term effect on the state budget.

25 (D) The board is directed to report its findings and recommendations to the Joint
26 Committee on Government and Finance at its monthly meeting of August, 2004.

§9-3-1508. Modified benefit plan implementation.

1 (a) Upon approval by the Centers for Medicare and Medicaid Services, the board shall

2 implement a benefit plan for uninsured children of families with income between two hundred and
3 three hundred percent of the federal poverty level.

4 (b) The benefit plans offered pursuant to this section shall include services determined to
5 be appropriate for children, but may vary from those currently offered by the board.

6 (c) The board shall structure the benefit plans for this expansion to include premiums,
7 coinsurance or copays and deductibles. The board shall develop the cost sharing features in such
8 a manner as to keep the program fiscally stable without creating a barrier to enrollment. Such
9 features may include different cost-sharing features within this group based upon the percentage
10 of the federal poverty level.

11 (d) Provider reimbursement schedules shall be no lower than the reimbursement provided
12 for the same services under the plans offered in §5-16-1 et seq. of this code.

13 (e) All provisions of this article are applicable to this expansion unless expressly
14 addressed in this section.

15 (f) Nothing in this section may be construed to require any appropriation of State General
16 Revenue Funds for the payment of any benefit provided pursuant to this section, except for the
17 state appropriation used to match the federal financial participation funds. In the event that federal
18 funds are no longer authorized for participation by individuals eligible at income levels above two
19 hundred percent, the board shall take immediate steps to terminate the expansion provided for in
20 this section and notify all enrollees of such termination. In the event federal appropriations
21 decrease for the programs created pursuant to Title XXI of the Social Security Act of 1997, the
22 board is directed to make those decreases in this expansion program before making changes to
23 the programs created for those children whose family income is less than two hundred percent of
24 the federal poverty level.

25 (g) The board is directed to report no less than quarterly to the Legislative Oversight
26 Commission on Health and Human Resources Accountability on the development,
27 implementation and progress of the expansion authorized in this section.

§9-3-1509. Coverage for treatment of autism spectrum disorders.

1 (a) To the extent that the diagnosis, evaluation and treatment of autism spectrum disorders
2 are not already covered by this agency, on or after January 1, 2012, a policy, plan or contract
3 subject to this section shall provide coverage for such diagnosis, evaluation and treatment, for
4 individuals ages eighteen months to eighteen years. To be eligible for coverage and benefits
5 under this section, the individual must be diagnosed with autism spectrum disorder at age eight
6 or younger. Such policy shall provide coverage for treatments that are medically necessary and
7 ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a
8 treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an
9 individual diagnosed with autism spectrum disorder.

10 (b) The coverage shall include, but not be limited to, applied behavior analysis. Applied
11 behavior analysis shall be provided or supervised by a certified behavior analyst. The annual
12 maximum benefit for applied behavior analysis required by this subsection shall be in an amount
13 not to exceed \$30,000 per individual, for three consecutive years from the date treatment
14 commences. At the conclusion of the third year, coverage for applied behavior analysis required
15 by this subsection shall be in an amount not to exceed \$2,000 per month, until the individual
16 reaches eighteen years of age, as long as the treatment is medically necessary and in accordance
17 with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive
18 evaluation or reevaluation of the individual. this section shall not be construed as limiting,
19 replacing or affecting any obligation to provide services to an individual under the Individuals with
20 Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time, or other publicly
21 funded programs. Nothing in this section shall be construed as requiring reimbursement for
22 services provided by public school personnel.

23 (c) The certified behavior analyst shall file progress reports with the agency semiannually.
24 In order for treatment to continue, the agency must receive objective evidence or a clinically
25 supportable statement of expectation that:

26 (1) The individual's condition is improving in response to treatment; and
27 (2) A maximum improvement is yet to be attained; and
28 (3) There is an expectation that the anticipated improvement is attainable in a reasonable
29 and generally predictable period of time.

30 (d) On or before January 1 each year, the agency shall file an annual report with the Joint
31 Committee on Government and Finance describing its implementation of the coverage provided
32 pursuant to this section. The report shall include, but shall not be limited to, the number of
33 individuals in the plan utilizing the coverage required by this section, the fiscal and administrative
34 impact of the implementation, and any recommendations the agency may have as to changes in
35 law or policy related to the coverage provided under this section. In addition, the agency shall
36 provide such other information as may be requested by the Joint Committee on Government and
37 Finance as it may from time to time request.

38 (e) For purposes of this section, the term:

39 (1) "Applied Behavior Analysis" means the design, implementation, and evaluation of
40 environmental modifications using behavioral stimuli and consequences, to produce socially
41 significant improvement in human behavior, including the use of direct observation, measurement,
42 and functional analysis of the relationship between environment and behavior.

43 (2) "Autism spectrum disorder" means any pervasive developmental disorder, including
44 autistic disorder, Asperger's Syndrome, Rett syndrome, childhood disintegrative disorder, or
45 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and
46 Statistical Manual of Mental Disorders of the American Psychiatric Association.

47 (3) "Certified behavior analyst" means an individual who is certified by the Behavior
48 Analyst Certification Board or certified by a similar nationally recognized organization.

49 (4) "Objective evidence" means standardized patient assessment instruments, outcome
50 measurements tools or measurable assessments of functional outcome. Use of objective
51 measures at the beginning of treatment, during and after treatment is recommended to quantify

52 progress and support justifications for continued treatment. The tools are not required, but their
53 use will enhance the justification for continued treatment.

54 (f) To the extent that the application of this section for autism spectrum disorder causes
55 an increase of at least one percent of actual total costs of coverage for the plan year the agency
56 may apply additional cost containment measures.

57 (g) To the extent that the provisions of this section require benefits that exceed the
58 essential health benefits specified under section 1302(b) of the Patient Protection and Affordable
59 Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified
60 essential health benefits shall not be required of the West Virginia Children's Health Insurance
61 Program.

§9-3-1510. West Virginia children's health fund.

1 (a) There is hereby created in the state Treasury a special revolving fund to be known as
2 the "West Virginia children's health fund", which shall be an interest-bearing account. All moneys
3 deposited or accrued in this fund shall be used exclusively:

- 4 (1) To provide the state's share of the children's health fund;
5 (2) To cover administrative costs associated with the children's health program; and
6 (3) To cover outreach activities.

7 (b) Moneys from the following sources may be placed into the fund:

8 (1) All public funds appropriated by the Legislature or transferred by any public agency as
9 contemplated or permitted by applicable federal program laws;

10 (2) All private moneys contributed by corporations, individuals or other entities to the fund
11 as contemplated and permitted by applicable federal and state laws;

12 (3) Any accrued interest; and

13 (4) Federal financial participation matching the amounts referred to in subdivisions (1), (2)
14 and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

15 (c) Any balance remaining in the children's health fund at the end of any state fiscal year

16 shall not revert to the state Treasury but shall remain in this fund and shall be used only in a
17 manner consistent with this article.

18 (d) Notwithstanding the provisions of §12-2-2 of this code, funds of the West Virginia
19 children's health fund may not be redesignated for any purpose other than those set forth in this
20 subsection. All state and private moneys received by the program shall be deposited in the West
21 Virginia consolidated investment pool with the West Virginia Investment Management Board, with
22 the interest income a proper credit to all such funds.

§9-3-1511. Termination and reauthorization.

1 (a) The program established in this article abrogates and shall be of no further force and
2 effect, without further action by the Legislature, upon the occurrence of any of the following:

3 (1) The date of entry of a final judgment or order by a court of competent jurisdiction which
4 disallows the program;

5 (2) The effective date of any reduction in annual federal funding levels below the amounts
6 allocated and/or projected in Title XXI of the Social Security Act of 1997;

7 (3) The effective date of any federal rule or regulation negating the purposes or effect of
8 this article; or

9 (4) For purposes of subdivisions (2) and (3) of this subsection, if a later effective date for
10 such reduction or negation is specified, such date will control.

11 (b) Upon termination of the board and notwithstanding any provisions to the contrary, the
12 director may change the levels of costs to covered families only in accordance with rules proposed
13 to the Legislature pursuant to the provisions of chapter 29A of this code.

§9-3-1512. Public-private partnerships.

1 The board and the director are authorized to work in conjunction with a nonprofit
2 corporation organized pursuant to the corporate laws of the state, structured to permit qualification
3 pursuant to section 501(c) of the Internal Revenue Code for purposes of assisting the children's
4 health program and funded from sources other than the state or federal government. Members of

5 the board may sit on the board of directors of the private nonprofit corporation.

§9-3-1513. Assignment of rights; right of subrogation by children's health insurance agency to the rights of recipients of medical assistance; rules as to effect of subrogation.

1 (a) Submission of an application to the children's health insurance agency for medical
2 assistance is, as a matter of law, an assignment of the right of the applicant or legal representative
3 thereof, to recovery from personal insurance or other sources, including, but not limited to, liable
4 third parties, to the extent of the cost of children's health insurance agency services paid for by
5 the children's health insurance agency program. This assignment of rights does not extend to
6 Medicare benefits. At the time the application is made, the children's health insurance agency
7 shall include a statement along with the application that explains that the applicant has assigned
8 his or her rights and the legal implications of making an assignment as provided in this section.

9 (b) If medical assistance is paid or will be paid to a provider of medical care on behalf of
10 a recipient of medical assistance because of any sickness, injury, disease or disability, and
11 another person is legally liable for the expense, either pursuant to contract, negligence or
12 otherwise, the children's health insurance agency shall have a right to recover full reimbursement
13 from any award or settlement for the medical assistance from the other person, or from the
14 recipient of the assistance if he or she has been reimbursed by the other person. The children's
15 health insurance agency shall be legally assigned the rights of the recipient against the person
16 so liable, but only to the extent of the reasonable value of the medical assistance paid and
17 attributable to the sickness, injury, disease or disability for which the recipient has received
18 damages. When an action or claim is brought by a medical assistance recipient or by someone
19 on his or her behalf against a third party who may be liable for the injury, disease, disability or
20 death of a medical assistance recipient, any settlement, judgment or award obtained is subject to
21 the claim of the children's health insurance agency for reimbursement of an amount sufficient to
22 reimburse the children's health insurance agency the full amount of benefits paid on behalf of the

23 recipient under the medical assistance program for the injury, disease, disability or death of the
24 medical assistance recipient. The claim of the children's health insurance agency assigned by the
25 recipient may not exceed the amount of medical expenses for the injury, disease, disability or
26 death of the recipient paid by the children's health insurance agency on behalf of the recipient.
27 The right of subrogation created in this section includes all portions of the cause of action, by
28 either settlement, compromise, judgment or award, notwithstanding any settlement allocation or
29 apportionment that purports to dispose of portions of the cause of action not subject to the
30 subrogation. Any settlement, compromise, judgment or award that excludes or limits the cost of
31 medical services or care does not preclude the children's health insurance agency from enforcing
32 its rights under this section. The children's health insurance agency may compromise, settle and
33 execute a release of any claim, in whole or in part.

34 (c) Nothing in this section shall be construed so as to prevent the recipient of medical
35 assistance from maintaining an action for injuries received by them against any other person and
36 from including therein, as part of the compensatory damages sought to be recovered, the amount
37 or amounts of his or her medical expenses, even though the person received medical assistance
38 in the payment of the medical expenses, in whole or in part.

39 (d) If the action be tried by a jury, the jury is not to be informed as to the interest of the
40 children's health insurance agency, if any, and the fact is not to be disclosed to the jury at any
41 time. The trial judge shall, upon the entry of judgment on the verdict, direct that an amount equal
42 to the amount of medical assistance given be withheld and paid over to the children's health
43 insurance agency. Irrespective of whether the case be terminated by judgment or by settlement
44 without trial, from the amount required to be paid to the children's health insurance agency there
45 shall be deducted the attorney fees attributable to the amount in accordance with and in proportion
46 to the fee arrangement made between the recipient and his or her attorney of record so that the
47 children's health insurance agency shall bear the pro rata portion of the attorney fees. Nothing in
48 this section shall preclude any person who has received medical assistance from settling any

49 cause of action which he or she may have against another person and delivering to the children's
50 health insurance agency, from the proceeds of the settlement, the sums received by him or her
51 from the children's health insurance agency or paid by the children's health insurance agency for
52 his or her medical assistance. If the other person is aware of or has been informed of the interest
53 of the children's health insurance agency in the matter, it shall be the duty of the person to whose
54 benefit the release inures to withhold so much of the settlement as may be necessary to reimburse
55 the children's health insurance agency to the extent of its interest in the settlement. No judgment,
56 award of or settlement in any action or claim by a medical assistance recipient to recover damages
57 for injuries, disease or disability, in which the children's health insurance agency has interest,
58 shall be satisfied without first giving the children's health insurance agency notice and reasonable
59 opportunity to establish its interest. The children's health insurance agency shall have sixty days
60 from receipt of written notice to advise the recipient or his or her representative in writing of the
61 children's health insurance agency's desire to establish its interest through the assignment. If no
62 written intent is received within the sixty-day period, then the recipient may proceed and in the
63 event of full recovery forward to the children's health insurance agency the portion of the recovery
64 proceeds less the children's health insurance agency's share of attorney's fees and costs
65 expended in the matter. In the event of less than full recovery the recipient and the children's
66 health insurance agency shall agree as to the amount to be paid to the children's health insurance
67 agency for its claim. If there is no recovery, the children's health insurance agency shall under no
68 circumstances be liable for any costs or attorney's fees expended in the matter. If, after being
69 notified in writing of a subrogation claim and possible liability of the recipient, guardian, attorney
70 or personal representative for failure to subrogate the children's health insurance agency, a
71 recipient, his or her guardian, attorney or personal representative disposes of the funds
72 representing the judgment, settlement or award, without the written approval of the children's
73 health insurance agency, that person shall be liable to the children's health insurance agency for
74 any amount that, as a result of the disposition of the funds, is not recoverable by the children's

75 health insurance agency. In the event that a controversy arises concerning the subrogation claims
76 by the children's health insurance agency, an attorney shall interplead, pursuant to rule twenty-
77 two of the rules of civil procedure, the portion of the recipient's settlement that will satisfy the
78 children's health insurance agency exclusive of attorney's fees and costs regardless of any
79 contractual arrangement between the client and the attorney.

80 (e) Nothing contained herein shall authorize the children's health insurance agency to
81 institute a class action or multiple plaintiff action against any manufacturer, distributor or vendor
82 of any product to recover children's health insurance agency care expenditures paid for by the
83 children's health insurance agency program.

PART SIXTEEN. MISCELLANEOUS PROVISIONS RELATIVE TO HUMAN SERVICES.

§9-3-1601. Information and referral services.

1 (a) Each local office shall compile, maintain and post a current list of donated food banks
2 and other emergency food providers in the area served by the local SNAP office and refer
3 individuals who need food to local programs that may be able to provide assistance.

4 (b) The department shall use its existing statewide toll free telephone number to provide
5 emergency food information and to refer needy individuals to local programs that may be able to
6 provide assistance. The department shall publish the telephone number for referrals in the
7 emergency telephone numbers section of local telephone books. The department shall display
8 this telephone number in all its offices that issue food stamps.

§9-3-1602. Exemption of grants from certain taxes and claims.

1 Grants of all classes of public assistance received under the provisions of this article shall
2 be exempted from the collection of taxes except sales taxes, from levy of execution, garnishment,
3 suggestion, and any other legal process.

§9-3-1603. Release of liens and reassignment of insurance policies.

1 All liens and claims upon real and personal property and all assignments of insurance

2 policies, imposed, existing or made under the provisions of chapter one, acts of the Legislature,
3 first extraordinary session, one thousand nine hundred thirty-six, chapter one hundred five, acts
4 of the Legislature, regular session, one thousand nine hundred thirty-nine, chapter seventy-four,
5 acts of the Legislature, regular session, one thousand nine hundred forty-one, chapter one
6 hundred twenty-four, acts of the Legislature, regular session, one thousand nine hundred forty-
7 seven, and chapter one hundred forty-three, acts of the Legislature, regular session, one
8 thousand nine hundred fifty-three, which have not been released or reassigned, shall be released
9 or reassigned by the secretary by the preparation, execution and acknowledgment of a release
10 of each lien or claim and by the delivery of such release to the person or persons entitled thereto
11 for recordation and by a reassignment of each such insurance policy to the person or persons
12 entitled thereto.

§9-3-1604. Recipient of assistance not a pauper.

1 A recipient of any class of assistance shall not be deemed a pauper by reason of the
2 receipt of such assistance.

§9-3-1605. Recipients of cash grants.

1 (a) Within such limitations as may be imposed by applicable federal laws, rules and
2 regulations, the department shall make available for public inspection by the thirtieth day of each
3 month a separate alphabetical list of the names and addresses of all persons receiving any class
4 of public assistance in the form of cash grants during the preceding month, together with the
5 amounts of such cash grants. This information shall be delivered to the clerk of each county court
6 in the state who shall immediately file the same in his or her office with respect to persons
7 receiving such cash grants as residents of that county. Such information shall be retained in the
8 files of said clerks of the county courts for a period of two years from the date of receipt thereof.
9 All information other than names, addresses and amounts of such cash grants shall be considered
10 as confidential.

11 (b) It shall be unlawful, for commercial or political purposes of any nature, for any person

12 or persons, body, association, firm, corporation or other agency to solicit, disclose, receive, make
13 use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any lists of
14 names of, or any information concerning, persons applying for or receiving any class of
15 assistance, directly or indirectly derived from the records, papers, files, or communications of the
16 department or acquired in the course of performance of official duties. The violation of this
17 provision is a misdemeanor, punishable upon conviction, by a fine of not more than \$1,000 or
18 imprisonment of not more than six months, or both.

19 (c) For the protection of applicants and recipients of public assistance, the department
20 shall be required to establish reasonable rules and regulations governing the custody, use and
21 preservation of the records, papers, files and communications of the department.

§9-3-1606. Visitation by county employees.

1 Health officers, physicians, and nurses employed by the county shall, at the request of the
2 Commissioner of the Bureau for Children and Families, make home visits to persons applying for,
3 or receiving, benefits pursuant to this article.

§9-3-1607. Liability of relatives for support.

1 (a) The relatives of an indigent person, who are of sufficient ability, shall be liable to
2 support such person in the manner required by the Department of Human Services and to pay
3 the expenses of burial when he or she dies, in the following order:

4 (1) The children.

5 (2) The father.

6 (3) The brothers and sisters.

7 (4) The mother.

8 (b) The Commissioner of the Bureau for Children and Families may proceed by motion in
9 the circuit court of the county in which the indigent person may be, against one or more of the
10 relatives liable.

11 (c) If a relative so liable does not reside in this state and has no estate or debts due him

12 or her within the state by means of which the liability can be enforced against him or her, the other
13 relatives shall be liable as provided by this section, but a relative shall not be compelled to receive
14 the indigent person in his or her own home.

15 (d) If it appears that a relative liable for the support of an indigent person is unable wholly
16 to support him or her, but is able to contribute toward his or her support, the court may assess
17 upon the relative the proportion which he or she shall be required to contribute either to the past
18 expense incurred by the department or to the future support. The court may assess the residue
19 upon the relatives in the order of their liability.

20 (e) Payment with interest and costs may be enforced by execution.

§9-3-1608. Funeral expenses for indigent persons; filing of affidavit to certify indigency;
penalties for false swearing; payment by department.

1 (a) The Department of Human Services shall pay for reasonable funeral service expenses
2 for indigent persons, in an amount not to exceed \$1,250.

3 (b) For purposes of this section, the indigency of a deceased person is determined by the
4 filing of an affidavit with the department, in a form provided by and determined in accordance with
5 the income guidelines as set forth by the department:

6 (1) Signed by the heir or heirs-at-law which states that the estate of the deceased person
7 is pecuniarily unable to pay the costs associated with a funeral; or

8 (2) Signed by the county coroner or the county health officer, the attending physician or
9 other person signing the death certificate or the state medical examiner stating that the deceased
10 person has no heirs or that heirs have not been located after a reasonable search and that the
11 deceased person had no estate or the estate is pecuniarily unable to pay the costs associated
12 with a funeral.

13 (c) Payment shall be made by the department to the person or persons who have furnished
14 the services and supplies for the indigent person's funeral expenses or to the persons who have
15 advanced payment for same, as the department may determine, pursuant to appropriations for

16 expenditures made by the Legislature for such purpose.

17 (d) For purposes of this section, "reasonable funeral service expenses" means expenses
18 for services provided by a funeral director for the disposition of human remains.

19 (e) Any person who knowingly swears falsely in an affidavit required by this section shall
20 be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or
21 confined in the county or regional jail for a period of not more than six months, or both.

PART SEVENTEEN. MISCELLANEOUS PROVISIONS RELATED TO MEDICAID.

§9-3-1701. Agreements between the secretary and three higher education institutions.

1 Any contract, agreement or memorandum of understanding between the secretary and
2 West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for
3 services is exempt from the provisions of §5A-3-1 et seq. of this code.

§9-3-1702. Medicaid-certified nursing homes; screening of applicants and residents for mental illness; reimbursement of hospitals.

1 (a) The department or the bureau shall cause individuals applying for admission to or
2 residing in a Medicaid-certified nursing home to be screened as required by the Omnibus Budget
3 Reconciliation Act of 1987.

4 (b) Hospitals shall receive administrative day payment at a rate set by the Medicaid agency
5 to reimburse the hospitals for days required for the screening of Medicaid eligible patients required
6 by subsection (a) of this section.

7 (c) The secretary may promulgate rules pursuant to the provision of §29A-3-1 et seq. of
8 this code to implement this section.

§9-3-1703. Nonprofit agency or facility, in receipt of Medicaid moneys; annual accounting.

1 Any nonprofit health care agency or facility which receives Medicaid moneys shall provide
2 an annual accounting of that facility's or provider's receipts and disbursements, including the total
3 salaries of all employees and administrators. One copy shall be submitted to the Joint Committee

4 on Government and Finance and one copy shall be submitted to the Health Care Authority on or
5 before the January 15 for the preceding year.

§9-3-1704. Advisory council.

1 (a) The Medicaid Advisory Council is continued and has those advisory powers and duties
2 as are granted and imposed by this section and elsewhere by law.

3 (b) The advisory council shall consist of not less than nine members, nor more than fifteen
4 members, all but four of whom shall be appointed by the Commissioner of the Bureau of Medical
5 Services and serve until replaced or reappointed on a rotating basis.

6 (c)(1) The Commissioner of the Bureau for Public Health and the Commissioner of the
7 Bureau for Medical Services are members ex officio.

8 (2) The co-chairs of the Legislative Oversight Commission on Health and Human
9 Resources Accountability, or their designees, are nonvoting ex officio members.

10 (3) The remaining members comprising the council consist of:

11 (A) One member of recognized ability in the field of medicine and surgery with respect to
12 whose appointment the state Medical Association shall be afforded the opportunity of making
13 nomination of three qualified persons;

14 (B) One member of recognized ability in the field of dentistry with respect to whose
15 appointment the state Dental Association shall be afforded the opportunity of nominating three
16 qualified persons;

17 (C) One member chosen from a list of three persons nominated by the West Virginia
18 Primary Care Association;

19 (D) One member chosen from a list of three persons nominated by the Behavioral Health
20 Providers Association of West Virginia; and

21 (E) The remaining members chosen from persons of recognized ability in the fields of
22 hospital administration, nursing and allied professions and from consumers groups, including
23 Medicaid recipients, members of the West Virginia Directors of Senior and Community Services,

24 labor unions, cooperatives and consumer- sponsored prepaid group practices plans.

25 (d) The council shall meet on call of the state Medicaid Agency.

26 (e) Each member of the advisory council shall receive reimbursement for reasonable and
27 necessary travel expenses for each day actually served in attendance at meetings of the council
28 in accordance with the state's travel regulations. Requisitions for the expenses shall be
29 accompanied by an itemized statement, which shall be filed with the auditor and preserved as a
30 public record.

31 (f) The advisory council shall assist the state Medicaid Agency in the establishment of
32 rules, standards and bylaws necessary to carry out the provisions of this section and shall serve
33 as consultants to the state Medicaid Agency in carrying out the provisions of this section.

§9-3-1705. Secretary to develop Medicaid monitoring and case management.

1 (a) The secretary shall:

2 (1) Develop a managed care system to monitor the services provided by the Medicaid
3 program to individual clients;

4 (2) Develop an independent referral service, including the review of individual cases for
5 abuses of the program; and

6 (3) Develop a schedule for implementation of the managed care and independent referral
7 system. The managed care system shall focus on, but not be limited to, the behavioral health
8 and mental health services.

9 (b) In addition thereto, and in accordance with applicable federal Medicaid laws, the
10 secretary shall prepare recommendations, to be submitted to the Joint Committee on Government
11 and Finance.

12 (c) In developing recommendations the secretary shall consider as options the following:

13 (1) Review of Medicaid services which are optional under federal Medicaid law and
14 identification of services to be retained, reduced or eliminated;

15 (2) The elimination, reduction or phase-out of:

16 (A) Services which are not generally available to West Virginia citizens not covered under
17 the state's Medicaid program; or

18 (B) Services which are not generally covered under group policies of insurance made
19 available to employees of employers within the state;

20 (3) The elimination or reduction of services, or reduction of provider reimbursement rates,
21 for identified services of marginal utility;

22 (4) Higher reimbursement rates for primary and preventive care;

23 (5) Changes in fee structure, which may include a system of prospective payments, and
24 may include establishment of global fees for identified services or diagnoses including maternity
25 care;

26 (6) Utilization caps for certain health care procedures;

27 (7) Restriction of coverage for cosmetic procedures;

28 (8) Identification of excessive use of certain health care procedures by individuals and a
29 policy to restrict excessive use;

30 (9) Identification of services which reduce the need for more costly options for necessary
31 care and retention or expansion of those programs;

32 (10) Identification of services for which preauthorization is a requirement for Medicaid
33 reimbursement;

34 (11) Recommendations relating to the development of a demonstration project on long-
35 term care, which demonstration project may be limited to patients with Alzheimer's disease;

36 (12) A policy concerning the department's procedures for compliance, monitoring and
37 inspection; and

38 (13) Such other options as may be developed.

39 (d) The secretary shall utilize in-state health care facilities for inpatient treatment when
40 such facilities are available. Prior authorization, consistent with applicable federal law, shall be
41 required for out-of-state inpatient treatment.

42 (e) The secretary shall report to the Joint Committee on Government and Finance on the
43 development and implementation of Medicaid programs that provide incentives to working
44 persons. The secretary shall consider:

45 (1) Subsidies for low income working persons;

46 (2) Individual or small employer buy-ins to the state Medicaid Fund;

47 (3) Prospective payment systems for primary care physicians in underserved areas; and

48 (4) A system to improve monitoring of collections, expenditures, service delivery and
49 utilization.

50 (f) The secretary shall report quarterly to the Joint Committee on Government and Finance
51 regarding provider and facility compliance with federal and state Medicaid laws, including, but not
52 limited to, the following:

53 (1) The number of inspections conducted during the previous quarter;

54 (2) Description of programs, services and facilities reviewed;

55 (3) Findings; and

56 (4) Recommendations for corrections.

57 (g) The secretary shall, upon federal certification of the claims management system,
58 ensure that the claims management system processing Medicaid claims provides detailed
59 quarterly financial reports to the Legislative Oversight Commission on Health and Human
60 Resources Accountability.

§9-3-1706. Visitation by county employees.

1 Health officers, physicians, and nurses employed by the county shall, at the request of the
2 Commissioner of the Bureau for Medical Services, make home visits to persons applying for, or
3 receiving benefits, pursuant to this article.

§9-3-1707. Medicaid program compact.

1 (a) The Secretary of the Department of Human Services shall contact West Virginia's
2 surrounding states to discuss the creation of a compact. This compact would enable each states'

3 health care providers to be eligible to be paid for services provided to the other states' Medicaid
4 participants.

5 (b) The secretary shall provide a report on the creation of a Medicaid compact to the
6 Legislative Oversight Commission on Health and Human Resources Accountability before
7 October 31, 2019.

§9-3-1708. Supplemental Medicaid reimbursement.

1 (a) A ground emergency medical transportation services provider, owned or operated by
2 the state or a city, a county, or city and county, that provides services to Medicaid beneficiaries is
3 eligible for supplemental reimbursement.

4 (b) An eligible provider's supplemental reimbursement shall be calculated and paid as
5 follows:

6 (1) The supplemental reimbursement to an eligible provider shall be equal to the amount
7 of federal financial participation received as a result of the claims submitted.

8 (2) In no instance, may the amount certified, when combined with the amount received
9 from all other sources of reimbursement from the Medicaid program, exceed one hundred percent
10 of actual costs, as determined pursuant to the Medicaid State Plan, for ground emergency medical
11 transportation services.

12 (3) The supplemental Medicaid reimbursement shall be distributed exclusively to eligible
13 providers under a payment methodology based on ground emergency medical transportation
14 services provided to Medicaid beneficiaries by eligible providers on a per-transport basis or other
15 federally permissible basis. The Department of Human Services shall obtain approval from the
16 Centers for Medicare and Medicaid Services for the payment methodology to be used, and may
17 not make any payment pursuant to this section prior to obtaining that approval.

18 (c) No funds may be expended from the state fund, general revenue for any supplemental
19 reimbursement paid under this section.

20 (d) The nonfederal share of the supplemental reimbursement submitted to the federal

21 Centers for Medicare and Medicaid Services for purposes of claiming federal financial
22 participation may be paid only with funds from the governmental entities.

23 (e) Participation in the program by an eligible provider described in this section is
24 voluntary.

25 (f) If an applicable governmental entity elects to seek supplemental reimbursement
26 pursuant to this section on behalf of an eligible provider, the governmental entity shall:

27 (1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code
28 of Federal Regulations, that the claimed expenditures for the ground emergency medical
29 transportation services are eligible for federal financial participation;

30 (2) Provide evidence supporting the certification as specified by the Department of Human
31 Services;

32 (3) Submit data as specified by the Department of Human Services to determine the
33 appropriate amounts to claim as expenditures qualifying for federal financial participation; and

34 (4) Keep, maintain, and have readily retrievable, any records specified by the Department
35 of Human Services to fully disclose reimbursement amounts to which the eligible provider is
36 entitled, and any other records required by the federal Centers for Medicare and Medicaid
37 Services.

38 (g) (1) The Department of Human Services shall promptly seek any necessary federal
39 approvals for the implementation of this section. The Department of Human Services may limit
40 the program to those costs that are allowable expenditures under Title XIX of the federal Social
41 Security Act (42 U.S.C. 1396 et seq.). If federal approval is not obtained for implementation of
42 this section, this section may not be implemented.

43 (2) The Department of Human Services shall submit claims for federal financial
44 participation for the expenditures for the services that are allowable expenditures under federal
45 law.

46 (3) The Department of Human Services shall, on an annual basis, submit any necessary

47 materials to the federal government to provide assurances that claims for federal financial
48 participation will include only those expenditures that are allowable under federal law.

49 (4) Notwithstanding the provisions of subdivision (1) of this subsection, the Department of
50 Human Services shall, prior to seeking federal approval of any supplemental reimbursement
51 pursuant to this section, attempt to maximize the number of qualified group emergency medical
52 transportation service providers eligible to receive the supplemental reimbursement. These
53 emergency medical transportation service providers would include:

54 (A) Any not-for-profit emergency medical transport providers not owned by the state or a
55 city, a county, or a city and county;

56 (B) Any voluntary emergency transportation service providers not owned by the state or a
57 city, a county, or a city and county; and

58 (C) All other emergency medical transportation service providers licensed pursuant to the
59 provisions of §16-4C-1 et seq. of this code.

§9-3-1709. Long-Term Care Partnership Program.

1 (a) The bureau shall establish a long-term care partnership program in order to provide
2 for the financing of long-term care through a combination of private insurance and Medicaid in
3 accordance with federal requirements on qualified state long-term care insurance partnerships.

4 (b) The bureau shall file a state plan amendment, pursuant to Title XIX of the United States
5 Social Security Act and any amendments thereto, to the United States Department of Health and
6 Human Services to establish that the assets an individual owns and may retain under Medicaid
7 and still qualify for benefits under Medicaid at the time the individual applies for benefits is
8 increased dollar-for-dollar for each dollar paid out under the individuals' long-term care insurance
9 policy if the individual is a beneficiary of a qualified long-term care partnership program policy.

10 (c) An individual who is a beneficiary of a West Virginia long-term care partnership
11 program and meets eligibility requirements is eligible for assistance under the state's medical
12 assistance program using the asset disregard as provided under subsection (b).

13 (d) The bureau shall pursue reciprocal agreements with other states to extend the asset
14 disregard to West Virginia residents who purchased long-term care partnership policies in other
15 states that are compliant with Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005,
16 PL 109-171, and any applicable federal regulations or guidelines.

17 (e) Upon diminishment of assets below the anticipated remaining benefits under a long-
18 term care partnership program policy, certain assets of an individual, as provided under
19 subsection (b), shall not be considered when determining any of the following:

20 (1) Medicaid eligibility;

21 (2) The amount of any Medicaid payment;

22 (3) Any subsequent recovery by the state of a payment for medical services or long-term
23 care services.

24 (f) If the long-term care partnership program is discontinued, an individual who purchased
25 a West Virginia long-term care partnership program policy before the date the program was
26 discontinued shall be eligible to receive asset disregard if allowed as provided by Title VI, Section
27 6021 of the Federal Deficit Reduction Act of 2005, PL 109-171.

ARTICLE 4. OFFICE OF INSPECTOR GENERAL.

PART ONE. INVESTIGATIONS OF FRAUD AND ABUSE

§9-4-101. Creation of the Office of Inspector General.

1 Effective the first day of July, 2019, The Office of Inspector General is created and
2 continued. The Office of Inspector General shall investigate fraud and abuse in state assistance
3 programs for purposes of bringing criminal actions based upon these investigations.

§9-4-102. Appointment of Inspector General; qualifications; oath; compensation.

1 (a) There is created the position of Inspector General. The Inspector General shall:

2 (1) Be appointed by the Governor and subject to the provisions of §29-6-1 et seq. of this
3 code;

4 (2) Serve on a full-time basis and shall not engage in any other profession or occupation,
5 including the holding of a political office in the state either by election or appointment, while serving
6 as Inspector General; and

7 (3) Be an attorney licensed to practice in this state pursuant to the provision of §30-2-1 et
8 seq. of this code.

9 (b) Before entering upon the discharge of the duties as Inspector General, the Inspector
10 General shall take and subscribe to the oath of office prescribed in section five, article IV of the
11 Constitution of West Virginia.

12 (c) The Inspector General shall receive:

13 (1) A reasonable and competitive compensation package to be established by the
14 Governor; and

15 (2) Reimbursement for expenses under the standard state travel regulations.

16 (d) The Inspector General and all employees of the Office of Inspector General shall be
17 governed by the classified service provisions of §29-6-1 et seq. of this code and rules promulgated
18 pursuant thereto.

§9-4-103. Powers and duties of the Inspector General.

1 In addition to the powers and duties set forth in any other provision of this code, the
2 Inspector General has the following powers and duties:

3 (1) To conduct and supervise investigations for the purpose of providing quality control
4 and fraud investigation and management for the programs of the Department of Health and
5 Compliance and the Department of Human Services.

6 (2) Investigating fraud and intra-agency employee misconduct for the above referenced
7 departments.

8 (3) Coordination with any other office or entity within the Department of Health and
9 Compliance, the Department of Healthcare Facilities and the Department of Human Services
10 necessary for quality control and investigation and fraud management;

- 11 (4) Holding public hearings, as needed and mandated by this code;
12 (5) Data collection, as needed and mandated by this code;
13 (6) To develop and maintain a state plan which:
14 (A) Sets forth needs of the state in providing investigations into fraud, misuse and waste;
15 (B) Provide procedures and requirements for licensing of healthcare facilities;
16 (C) Sets forth goals and objectives for meeting those needs; and
17 (D) Contains plans of operation for achieving the stated goals and objectives, including
18 organizational structure and statement of requirements in personnel funds and authority for
19 achieving the goals and objectives.
- 20 (7) To appoint deputies and assistants to supervise the programs of the Office of Inspector
21 General and such other assistants and employees as may be necessary for the efficient operation
22 of the office and all its programs;
- 23 (8) To delegate to any of his or her appointees, assistants or employees all powers and
24 duties vested in the Inspector General. The Inspector General shall be responsible for the acts
25 of such appointees, assistants and employees;
- 26 (9) To refer criminal matters to the various county prosecuting attorneys and/or the
27 Attorney General necessary for the filing and prosecution of criminal actions of cases of fraud and
28 abuse relating to medical and public assistance as provided in §9-4-108 of this code;
- 29 (10) Perform all other duties and functions as required by this code and are reasonably
30 necessary or essential to affect the express objectives and purpose of this article; and
- 31 (11) To make periodic reports to the Attorney General, Governor and to the Legislature as
32 required by this chapter.

§9-4-104. Organization and employees.

- 1 (a) The Inspector General shall organize the work of the office in such offices or other
2 organizational units as he or she may determine to be necessary for effective and efficient
3 operation.

4 (b) The Inspector General shall employ a sufficient number of employees so as to provide
5 for the effective and efficient operation of the office.

6 (c) The Inspector General, if he or she deems such action necessary, may hire legal
7 counsel for the office, notwithstanding the provisions of §5-3-2 of this code or any other code
8 provision to the contrary, or may request the Attorney General to appoint counsel who shall
9 perform such duties as may be required by the office. The Attorney General, in pursuance of such
10 request, may select and appoint counsel to serve at the will and pleasure of the Attorney General,
11 and shall be paid out of any funds allocated and appropriated to the office.

§9-4-105. Supervisory responsibilities of the Inspector General.

1 The Inspector General shall have control and supervision of the office and shall be
2 responsible for the work of each of its organizational units. Each organizational unit shall be
3 headed by an employee of the office appointed by the Inspector General who shall be responsible
4 to the Inspector General for the work of his or her organizational unit.

§9-4-106. General powers and duties of the Office of Inspector General.

1 In carrying out the policies and procedures for enforcing the provisions of this chapter, the
2 Inspector General shall have the following power and authority:

3 (1) To establish policies and procedures for governing the administration of the office and
4 the conducting of necessary investigations into fraud, misuse and waste;

5 (2) To formulate standard fiscal procedures and make recommendations for improvement
6 of the office;

7 (3) To provide for a procedure for supplies and equipment for the office; and

8 (4) To perform any other duties assigned by the Governor.

§9-4-107. Organization of Investigation and Fraud Management Division.

1 (a) The Inspector General shall organize and operate an Investigation and Fraud
2 Management Division. If the Inspector General has credible information that indicates a person
3 has engaged in an act or activity related to any program, bureau, benefit or intra-agency employee

4 misconduct of the following departments which is subject to prosecution, it may conduct an
5 investigation to determine if the act has been committed. These departments shall include the
6 Department of Health and Compliance and the Department of Human Services.

7 (b) To the extent necessary to the investigation, the Inspector General or an employee of
8 the Office of the Inspector General designated by the Inspector General may administer oaths or
9 affirmations and issue subpoenas for witnesses and documents relevant to the investigation,
10 including information concerning the existence, description, nature, custody, condition and
11 location of any book, record, document or other tangible thing and the identity and location of
12 persons having knowledge of relevant facts or any matter reasonably calculated to lead to the
13 discovery of admissible evidence.

14 (c) When the Investigation and Fraud Management Division has probable cause to believe
15 that a person has engaged in an act or activity which is subject to prosecution relating to bureaus,
16 programs, benefits or intra-agency employee misconduct of the departments listed in subsection
17 (a) of this section, the Inspector General or an employee of the Office of the Inspector General
18 designated by the Inspector General may request search warrants and present and swear or
19 affirm criminal complaints.

20 (d) If documents necessary to an investigation of the Investigation and Fraud Management
21 Division appear to be located outside the state, the documents shall be made available by the
22 person or entity within the jurisdiction of the state having control over such documents either at a
23 convenient location within the state or, upon payment of necessary expenses to the department
24 for transportation and inspection, at the place outside the state where these documents are
25 maintained.

26 (e) Upon failure of a person to comply with a subpoena or a subpoena for the production
27 of evidence or failure of a person to give testimony without lawful excuse and upon reasonable
28 notice to all persons affected thereby, the Investigation and Fraud Management Division may
29 apply to the circuit court of the county in which compliance is sought for appropriate orders to

30 compel obedience with the provisions of this section.

31 (f) The Investigation and Fraud Management Division may not make public the name or
32 identity of a person whose acts or conduct is investigated pursuant to this article or the facts
33 disclosed in an investigation except as the same may be used in any legal action or enforcement
34 proceeding brought pursuant to this code or federal law.

§9-4-108. Referral for prosecution.

1 (a) Following an investigation of fraud and abuse among the various entities of state
2 government which provide medical and public assistance and if credible information exists that
3 indicates a person has engaged in an act or activity related to any program, bureau, benefit or
4 intra-agency employee misconduct of the Department of Health and Compliance and the
5 Department of Human Services the Inspector General shall refer matter to the prosecuting
6 attorney of the appropriate county with jurisdiction over the matter. The referral shall include all
7 evidence and information gathered during the investigation.

8 (b) The county prosecuting attorney shall have thirty days from the date of receipt of the
9 referral to notify the Inspector General of whether they intend to prosecute the matter or of their
10 refusal to proceed. Should the county prosecutor decline to prosecute the matter, the Inspector
11 General may refer the matter to the Attorney General.

12 (c) In addition to all other powers and duties granted the Attorney General in §5-3-1 et
13 seq. of this code and elsewhere in this code, the Attorney General is granted concurrent
14 jurisdiction with the county prosecuting attorney to criminally prosecute matters related to fraud
15 and abuse within the medical and public assistance programs operated by the state. The Attorney
16 General shall only have the power to criminally prosecute any matter referred to that office by the
17 Office of Inspector General.

18 (d) Upon receipt of a referral from the Office of Inspector General, the Attorney General
19 shall review the matter and determine whether or not to proceed with prosecution. He or she may
20 request further investigation by the Office of Inspector General should it be determined that

21 additional information is necessary for to proceed.

22 (e) The Inspector General shall provide all information on any matter referred for
23 prosecution to either the county prosecuting attorney or the Attorney General and shall cooperate
24 fully in the prosecution of all matters based upon a referral from the Office of Inspector General.

25 (f) All money collected from any settlement or recovery as a result of any prosecution
26 related to a referral from the Office of Inspector General shall be deposited in a special account
27 in the State Treasury to be known as the "Inspector General Recovery Fund". Expenditures from
28 the fund shall be for the purposes of funding the Office of Inspector General and are not authorized
29 from collections but are to be made only in accordance with appropriation by the Legislature and
30 in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the
31 provisions of §11B-2-1 et seq. of this code: *Provided*, That for the fiscal year ending June 30,
32 2019, expenditures are authorized from collection rather than pursuant to appropriation by the
33 Legislature.

34 (g) Nothing in this section requires a county prosecuting attorney or the Attorney General
35 to prosecute all matters referred to the office by the Office of Inspector General.

PART TWO. LICENSING OF HEALTH CARE FACILITIES.

§9-4-201. Creation of Office of Health Facility Licensure and Certification.

1 Effective the July 1, 2019, the Office of Health Facility Licensure and Certification is
2 created within the Office of Inspector General.

§9-4-202. Powers and duties of the Office of Health Facility Licensure and Certification.

1 (a) The primary function of the Office of Health Facility Licensure and Certification is the
2 investigation, inspection, regulation and licensing, where appropriate, of the following healthcare
3 facilities and entities to ensure compliance with state regulation and licensing rules and federal
4 certification requirements:

5 (1) Alzheimer's and Dementia Special Care Units and Programs licensed pursuant to the

6 provisions of §16-5R-1 et seq. of this code;

7 (2) Assisted living residences licensed pursuant to the provisions of §16-5D-1 et seq. a of
8 this code;

9 (3) Behavioral health facilities and centers, including but not limited to intermediate care
10 facilities for individuals with intellectual disabilities, licensed pursuant to the provisions of §27-13-
11 1 et seq. and §27-17-1 et seq. of this code;

12 (4) Birthing centers licensed pursuant to the provisions of §16-2C-1 et seq. of this code;

13 (5) Chronic pain management clinics licensed pursuant to the provisions of §16-5H-1 et
14 seq. of this code;

15 (6) Hospice facilities licensed pursuant to the provisions of §16-5I-1 et seq. of this code;

16 (7) Hospitals and similar facilities licensed pursuant to the provisions of §16-5B-1 et seq.
17 of this code;

18 (8) Legally unlicensed health care homes regulated pursuant to the provisions of §16-5E-
19 1 et seq. of this code;

20 (9) Medical adult day care centers regulated pursuant to the provisions of §16-5B-1 et seq.
21 of this code and §16-1-4 of this code;

22 (10) Medication administration by unlicensed personnel regulated pursuant to the
23 provisions of §16-5O-1 et seq. of this code;

24 (11) Medication-Assisted treatment facilities licensed pursuant to the provisions of §16-
25 5Y-1 et seq. of this code;

26 (12) Nurse aide abuse registry regulated pursuant to the provisions of chapter 9 and 16 of
27 this code;

28 (13) Nursing homes licensed pursuant to the provisions of §16-5C-1 et seq. of this code;

29 (14) Nonprofit corporations for conservator services licensed pursuant to the provisions of
30 §44A-1-1 et seq. of this code;

31 (15) Residential care communities licensed pursuant to the provisions of §16-5N-1 et seq.

32 of this code; and

33 (16) Any other health-related facility which the department is authorized to supervise and
34 for which specific rulemaking authority has not been granted.

35 (b) Other duties of the Office of Health Facility Licensure and Certification may be assigned
36 by the secretary.

§9-4-203. License from Office of Inspector General; regulations.

1 (a) No hospital, center or institution, or part of any hospital, center or institution, to provide
2 inpatient, outpatient or other service designed to contribute to the care and treatment of the
3 mentally ill or intellectually disabled, or prevention of such disorders, may be established,
4 maintained or operated by any political subdivision or by any person, persons, association or
5 corporation unless a license therefor is first obtained from the Office of Health Facility Licensure
6 and Certification.

7 (b) The application for such license shall be accompanied by a plan of the premises to be
8 occupied, and such other data and facts as the Office of Health Facility Licensure and Certification
9 may require. The Office of Health Facility Licensure and Certification may make such terms and
10 regulations in regard to the conduct of any licensed hospital, center or institution, or part of any
11 licensed hospital, center or institution, as he or she thinks proper and necessary.

12 (c) The Office of Health Facility Licensure and Certification has authority to investigate
13 and inspect any licensed hospital, center or institution, or part of any licensed hospital, center or
14 institution, and the Office of Health Facility Licensure and Certification may revoke the license of
15 any hospital, center or institution, or part of any hospital, center or institution, for good cause after
16 reasonable notice to the Chief Executive Officer or other person in charge of the hospital, center
17 or institution.

PART 3. BOARD OF REVIEW.

§9-4-301. Creation of Board of Review; purpose.

1 (a) Effective July 1, 2019, the Board of Review is established and continued within the
2 Office of Inspector General.

3 (b) The board is to functions to provide a fair, impartial, and expeditious hearing process
4 to applicants, recipients and providers who feel themselves aggrieved by the actions of the
5 Department of Health and Compliance, the Department of Healthcare Facilities and the
6 Department of Human Services.

§9-4-302. Organization of the Board of Review.

1 (a) There is organized within the Office of Inspector General a Board of Review. The
2 board shall consist of a chairman who shall be appointed by the secretary. The Inspector General
3 may assign as many assistants or employees as he or she may determine as necessary and as
4 may be required by federal laws and rules respecting state assistance, federal-state assistance
5 and federal assistance.

6 (b) The board shall have such powers of a review nature and such additional powers as
7 may be granted to it by the secretary and as may be required by federal laws and rules respecting
8 federal-state assistance and federal assistance.

§9-4-303. Judicial review of decisions of contested cases.

1 (a) The Board of Review as provided in this article shall provide a fair, impartial and
2 expeditious grievance and appeal process to applicants or recipients of state assistance, federal
3 assistance or federal-state assistance as defined in this article. The Board of Review shall provide
4 a fair, impartial and expeditious grievance and appeal process to applicants, recipients and
5 providers of services.

6 (b) Any party adversely affected or aggrieved by a final decision or order of the Board of
7 Review may seek judicial review of that decision.

8 (c) Proceedings for review shall be instituted by filing a petition, at the election of the
9 petitioner, in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the
10 county in which the petitioner or any one of the petitioners resides or does business, or with the

11 judge thereof in vacation, within thirty days after the date upon which such party received notice
12 of the final order or decision of the board. A copy of the petition shall be served upon the
13 appropriate department and all other parties of record by registered or certified mail. The petition
14 shall state whether the appeal is taken on questions of law or questions of fact, not both. No
15 appeal bond is required to effect any such appeal.

16 (d) The filing of the petition for appeal does not stay or supersede enforcement of the final
17 decision or order of the Board of Review or the appropriate department. The appropriate
18 department may voluntarily stay such enforcement and the appellant, at any time after the filing
19 of the petition for appeal, may apply to the circuit court of Kanawha County, or in the circuit court
20 of the county in which the petitioner or any one of the petitioners resides or does business, for a
21 stay of or to supersede the final decision or order. Pending the appeal, the circuit court may grant
22 a stay or supersede the order upon such terms as it considers proper.

23 (e) Within fifteen days after receipt of a copy of the petition by the Board of Review of the
24 appropriate department, or within such further time as the court may allow, the Board of Review
25 shall prepare and transmit to the circuit court of Kanawha County, or in the circuit court of the
26 county in which the petitioner or any one of the petitioners resides or does business, the original
27 or a certified copy of the entire record of the proceeding under review. All records prepared and
28 transmitted that involve a minor shall be filed under seal. This shall include a transcript of all
29 reported testimony and all exhibits, papers, motions, documents, evidence, records, agency staff
30 memoranda and data used in consideration of the case, all briefs, memoranda, papers and
31 records considered by the department in the underlying proceeding and a statement of matters
32 officially noted. By stipulation of the parties, the record may be shortened. In the event the
33 complete record is not filed with the court within the time provided for in this section, the appellant
34 may apply to the court to have the case docketed and the court shall order the Board of Review
35 of the appropriate department to file the record.

36 (f) The cost of preparing the official record shall be assessed as part of the costs of the

37 appeal. The appellant shall provide security for costs satisfactory to the court. Any party
38 unreasonably refusing to stipulate to limit the record may be assessed by the court for the
39 additional costs involved. Upon demand by any party to the appeal, the appropriate department
40 shall furnish, at cost to the requesting party, a copy of the official record.

41 (g) The court shall hear appeals upon assignments of error filed in the petition or set out
42 in the briefs filed by the parties. The court, in its discretion, may disregard errors not argued by
43 brief or may consider errors that are not assigned or argued. The court shall fix a date and time
44 for the hearing on the petition. Unless otherwise agreed by the parties, the court shall not schedule
45 the hearing sooner than ten days after the filing of the petition for appeal. The petitioner shall
46 provide notice of the date and time of the hearing to the Board of Review and the appropriate
47 department.

48 (h) In cases involving alleged irregularities in procedure before the Board of Review that
49 are not shown in the record, the court may take additional testimony. Otherwise, the circuit court
50 shall review the appeal without a jury and may only consider the official record provided pursuant
51 to the requirements of this section. The court may hear oral arguments and require written briefs.

52 (i) The court may affirm the final decision or order of the Board of Review or remand the
53 matter for further proceedings. The court may reverse, vacate or modify the final decision or order
54 of the Board of Review of the appropriate department only if the substantial rights of the petitioner
55 have been prejudiced because the administrative findings, inferences, conclusions, decision or
56 order are:

57 (1) In violation of constitutional or statutory provisions;

58 (2) In excess of the statutory authority or jurisdiction of the departments set forth in §9-4-
59 301 of this code;

60 (3) Made upon unlawful procedures;

61 (4) Affected by other error of law;

62 (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole

63 record; or

64 (6) Arbitrary or capricious or characterized by an abuse of discretion or clearly
65 unwarranted exercise of discretion.

66 (j) The judgment of the circuit court is final unless reversed, vacated or modified on appeal
67 to the West Virginia Supreme Court of Appeals.

68 (k) The process established by this section is the exclusive remedy for judicial review of
69 final decisions of the Board of Review and the various departments and bureaus set forth in this
70 chapter.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2a. Court determination of sexually violent predator.

1 (a) The circuit court that has sentenced a person for the commission of a sexually violent
2 offense or that has entered a judgment of acquittal of a charge of committing a sexually violent
3 offense in which the defendant has been found not guilty by reason of mental illness, mental
4 retardation or addiction shall make a determination whether:

5 (1) A person is a sexually violent predator; or

6 (2) A person is not a sexually violent predator.

7 (b) A hearing to make a determination as provided in subsection (a) of this section is a
8 summary proceeding, triable before the court without a jury.

9 (c) A proceeding seeking to establish that a person is a sexually violent predator is initiated
10 by the filing of a written pleading by the prosecuting attorney. The pleading shall describe the
11 record of the judgment of the court on the person's conviction or finding of not guilty by reason of
12 mental illness, mental retardation or addiction of a sexually violent offense and shall set forth a
13 short and plain statement of the prosecutor's claim that the person suffers from a mental
14 abnormality or personality disorder that makes the person likely to engage in predatory sexually

15 violent offenses.

16 (d) Prior to making a determination pursuant to the provisions of this section, the
17 sentencing court may order a psychiatric or other clinical examination and, after examination, may
18 further order a period of observation in an appropriate facility within this state designated by the
19 court after consultation with the ~~Director of the Division of Health~~ Secretary of the Department of
20 Human Services.

21 (e) Prior to making a determination pursuant to the provisions of this section, the
22 sentencing court shall request and receive a report by the board established pursuant to §15-12-
23 2b of this code. The report shall set forth the findings and recommendation of the board on the
24 issue of whether the person is a sexually violent predator.

25 (f) At a hearing to determine whether a person is a sexually violent predator, the person
26 shall be present and shall have the right to be represented by counsel, introduce evidence and
27 cross-examine witnesses. The offender shall have access to a summary of the medical evidence
28 to be presented by the state. The offender shall have the right to an examination by an
29 independent expert of his or her choice and testimony from the expert as a medical witness on
30 his or her behalf. At the termination of the hearing the court shall make a finding of fact upon a
31 preponderance of the evidence as to whether the person is a sexually violent predator.

32 (g) If a person is determined by the circuit court to be a sexually violent predator, the clerk
33 of the court shall forward a copy of the order to the State Police in the manner promulgated in
34 accordance with the provisions of §29A-3-1 *et seq.* of this code.

§15-12-2b. Creation of sex offender registration advisory board.

1 (a) There is hereby created within the Department of Military Affairs and Public Safety a
2 sex offender registration advisory board consisting of a minimum of five members appointed by
3 the secretary of the Department of Military Affairs and Public Safety. At least two of the members
4 shall be experts in the field of the behavior and treatment of sexual offenders, and each shall be
5 a physician, psychologist or social worker in the employ of this state appointed by the secretary

6 in consultation with the ~~Director of the Division of Health~~ Secretary of the Department of Human
 7 Services. The remaining members shall be victims rights advocates and representatives of law-
 8 enforcement agencies. Members of the board shall be reimbursed their reasonable expenses
 9 pursuant to the rules promulgated by the Department of Administration for the reimbursement of
 10 expenses of state officials and employees and shall receive no other compensation for their
 11 services. The board shall utilize the staff of the division or office within the Department of Military
 12 Affairs and Public Safety designated by the secretary thereof in carrying out its duties and
 13 responsibilities as set forth in this article.

14 (b) The board shall assist the circuit courts of this state in determining whether persons
 15 convicted of sexually violent offenses are sexually violent predators.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

1 As used in this article:

2 (1) "Basic public health services" means those services that are necessary to protect the
 3 health of the public. The three areas of basic public health services are communicable and
 4 reportable disease prevention and control, community health promotion and environmental health
 5 protection;

6 (2) "Bureau" means the Bureau for Public Health in the department;

7 (3) "Combined local board of health" means one form of organization for a local board of
 8 health and means a board of health serving any two or more counties or any county or counties
 9 and one or more municipalities within or partially within the county or counties;

10 (4) "Commissioner" means the Commissioner of the Bureau ~~who is the state health officer~~
 11 for Public Health;

12 (5) "County board of health" means one form of organization for a local board of health

13 and means a local board of health serving a single county;

14 (6) "Department" means the West Virginia Department of Health ~~and Human Resources~~ \

15 and Compliance;

16 (7) "Director" or "director of health" means the ~~state health officer~~ commissioner.

17 Administratively within the department, the bureau through its commissioner carries out the public

18 health functions of the department, unless otherwise assigned by the secretary;

19 (8) "Essential public health services" means the core public health activities necessary to

20 promote health and prevent disease, injury and disability for the citizens of the state. The services

21 include:

22 (A) Monitoring health status to identify community health problems;

23 (B) Diagnosing and investigating health problems and health hazards in the community;

24 (C) Informing, educating and empowering people about health issues;

25 (D) Mobilizing community partnerships to identify and solve health problems;

26 (E) Developing policies and plans that support individual and community health efforts;

27 (F) Enforcing laws and rules that protect health and ensure safety;

28 (G) Uniting people with needed personal health services and assuring the provision of

29 health care when it is otherwise not available;

30 (H) Promoting a competent public health and personal health care workforce;

31 (I) Evaluating the effectiveness, accessibility and quality of personal and population-based

32 health services; and

33 (J) Researching for new insights and innovative solutions to health problems;

34 (9) "Licensing boards" means those boards charged with regulating an occupation,

35 business or profession and on which the commissioner serves as a member;

36 (10) "Local board of health", "local board" or "board" means a board of health serving one

37 or more counties or one or more municipalities or a combination thereof;

38 (11) "Local health department" means the staff of the local board of health;

39 (12) "Local health officer" means the physician with a current West Virginia license to
40 practice medicine who supervises and directs the activities, services, staff and facilities of the
41 local health department and is appointed by the local board of health with approval by the
42 commissioner;

43 (13) "Municipal board of health" means one form of organization for a local board of health
44 and means a board of health serving a single municipality;

45 (14) "Performance-based standards" means generally accepted, objective standards such
46 as rules or guidelines against which public health performance can be measured;

47 (15) "Potential source of significant contamination" means a facility or activity that stores,
48 uses or produces substances or compounds with potential for significant contaminating impact if
49 released into the source water of a public water supply;

50 (16) "Program plan" or "plan of operation" means the annual plan for each local board of
51 health that must be submitted to the commissioner for approval;

52 (17) "Public groundwater supply source" means a primary source of water supply for a
53 public water system which is directly drawn from a well, underground stream, underground
54 reservoir, underground mine or other primary source of water supplies which is found underneath
55 the surface of the state;

56 (18) "Public surface water supply source" means a primary source of water supply for a
57 public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or
58 other primary sources of water supplies which are found on the surface of the state;

59 (19) "Public surface water influenced groundwater supply source" means a source of
60 water supply for a public water system which is directly drawn from an underground well,
61 underground river or stream, underground reservoir or underground mine, and the quantity and
62 quality of the water in that underground supply source is heavily influenced, directly or indirectly,
63 by the quantity and quality of surface water in the immediate area;

64 (20) "Public water system" means:

65 (A) Any water supply or system which regularly supplies or offers to supply water for
66 human consumption through pipes or other constructed conveyances, if serving at least an
67 average of twenty-five individuals per day for at least sixty days per year, or which has at least
68 fifteen service connections, and shall include:

69 (i) Any collection, treatment, storage and distribution facilities under the control of the
70 owner or operator of the system and used primarily in connection with the system; and

71 (ii) Any collection or pretreatment storage facilities not under such control which are used
72 primarily in connection with the system;

73 (B) A public water system does not include a system which meets all of the following
74 conditions:

75 (i) Consists only of distribution and storage facilities and does not have any collection and
76 treatment facilities;

77 (ii) Obtains all of its water from, but is not owned or operated by, a public water system
78 which otherwise meets the definition;

79 (iii) Does not sell water to any person; and

80 (iv) Is not a carrier conveying passengers in interstate commerce;

81 (21) "Public water utility" means a public water system which is regulated by the West
82 Virginia Public Service Commission pursuant to the provisions of chapter twenty-four of this code;

83 (22) "Secretary" means the secretary of the department.

84 (23) "Service area" means the territorial jurisdiction of a local board of health;

85 (24) "State Advisory Council on Public Health" means the advisory body charged by this
86 article with providing advice to the commissioner with respect to the provision of adequate public
87 health services for all areas in the state;

88 (25) "State Board of Health" means the secretary, notwithstanding any other provision of
89 this code to the contrary, whenever and wherever in this code there is a reference to the State
90 Board of Health;

91 (26) "Zone of critical concern" for a public surface water supply is a corridor along streams
92 within a watershed that warrant more detailed scrutiny due to its proximity to the surface water
93 intake and the intake's susceptibility to potential contaminants within that corridor. The zone of
94 critical concern is determined using a mathematical model that accounts for stream flows, gradient
95 and area topography. The length of the zone of critical concern is based on a five-hour time-of-
96 travel of water in the streams to the water intake, plus an additional one-fourth mile below the
97 water intake. The width of the zone of critical concern is one thousand feet measured horizontally
98 from each bank of the principal stream and five hundred feet measured horizontally from each
99 bank of the tributaries draining into the principal stream.

§16-1-3. Powers and duties of the secretary.

- 1 ~~(a) The secretary may establish a state public health system.~~
- 2 ~~(b) All powers and duties of the director of health previously established by former section~~
3 ~~ten of this article that are not specifically included in this chapter as powers and duties of the~~
4 ~~commissioner are powers and duties of the secretary.~~
- 5 ~~(c) As necessary for the effective, efficient and economical operation of the system, the~~
6 ~~secretary may from time to time delegate, assign, transfer or combine responsibilities or duties to~~
7 ~~or among employees of the department.~~
- 8 ~~(d) Within the limits of applicable federal law, the secretary may require every applicant~~
9 ~~for a license, permit, certificate of registration, or registration under this chapter to place his or her~~
10 ~~social security number on the application.~~
- 11 (a) The secretary may establish a state public health system.
- 12 (b) The secretary may delegate, assign, transfer or combine responsibilities assigned to
13 the secretary by this chapter to or among employees of the department as necessary for the
14 operation of the public health system.
- 15 (c) The secretary may require every applicant for a license, permit, certificate of
16 registration, or registration under this chapter to place his or her social security number on the

17 application, within the limits of applicable federal law.

18 (d) The secretary may propose rules in accordance with the provisions of §29A-3-1 et seq.
19 of this code that are necessary and proper to effectuate the purposes of this chapter.

§16-1-3a. Transfer of functions to secretary.

1 In addition to other duties assigned to the secretary in this article, effective July 1, 2019,
2 the following functions as set out in the respective sections of the code shall become functions
3 of the secretary. Any reference in these sections to the Secretary of the Department of Health
4 and Human Resources or the Director of Health means the Secretary of the Department of
5 Health and Compliance:

6 (1) Local boards of health as set forth in §16-2-1 et seq. of this code;

7 (2) Family planning and child spacing as set forth in §16-2B-1 et seq. of this code;

8 (3) Home health services as set forth in §16-2C-1 et seq. of this code;

9 (4) Parental notification of abortion as set forth in §16-2F-1 et seq. of this code;

10 (5) Primary care support program as set forth in §16-2H-1 et seq. of this code;

11 (6) Women's right to know as set forth in §16-2I-1 et seq. of this code;

12 (7) Pain-capable unborn child protection set forth in §16-2M-1 et seq. of this code;

13 (8) Prevention and control of communicable and other infectious diseases as set forth in
14 §16-3-1 et seq. of this code;

15 (9) Repository of information on medical treatment for certain hazardous materials as set
16 forth in §16-3A-1 et seq. of this code;

17 (10) Pertussis as set forth in §16-3B-1 et seq. of this code;

18 (11) AIDS-related medical testing and records confidentiality as set forth in §16-3C-1 et
19 seq. of this code;

20 (12) Tuberculous testing, control, treatment and commitment as set forth in §16-3D-1 et
21 seq. of this code;

22 (13) Sexually transmitted diseases as set forth in §16-4-1 et seq. of this code;

- 23 (14) Autopsies on bodies of deceased persons as set forth in §16-4B-1 et seq. of this
24 code;
- 25 (15) Expedited partner therapy as set forth in §16-4F-1 et seq. of this code;
- 26 (16) Vital statistics as set forth in §16-5-1 et seq. of this code;
- 27 (17) Cancer control as set forth in §16-5A-1 et seq. of this code;
- 28 (18) Osteoporosis prevention education as set forth in §16-5M-1 et seq. of this code;
- 29 (19) Medication administration by unlicensed personnel as set forth in §16-5O-1 et seq.
30 of this code;
- 31 (20) Alzheimer's special care standards as set forth in §16-5R-1 et seq. of this code;
- 32 (21) Arthritis prevention education as set forth in §16-5U-1 et seq. of this code;
- 33 (22) Hotels and restaurants as set forth in §16-6-1 et seq. of this code;
- 34 (23) Pure food and drugs as set forth in §16-7-1 et seq. of this code;
- 35 (24) Offenses generally as set forth in §16-9-1 et seq. of this code;
- 36 (25) Tobacco usage restrictions as set forth in §16-9A-1 et seq. of this code;
- 37 (26) Sanitary districts for sewage disposal as set forth in §16-12-1 et seq. of this code;
- 38 (27) Drinking water treatment revolving fund as set forth in §16-13C-1 et seq. of this
39 code;
- 40 (28) Storage and disposal of radioactive waste materials as set forth in §16-27-1 et seq.
41 of this code;
- 42 (29) State health care as set forth in §16-9D-1 et seq. of this code;
- 43 (30) West Virginia health care decisions as set forth in §16-30-1 et seq. of this code;
- 44 (31) Asbestos abatement as set forth in §16-32-1 et seq. of this code;
- 45 (32) Breast and cervical cancer prevention and control as set forth in §16-33-1 et seq. of
46 this code;
- 47 (33) Lead abatement as set forth in §16-35-1 et seq. of this code;
- 48 (34) Needlestick injury prevention as set forth in §16-36-1 et seq. of this code;

- 49 (35) Patient safety as set forth in §16-39-1 et seq. of this code;
50 (36) Oral health improvement act as set forth in §16-41-1 et seq. of this code;
51 (37) Access to opioid antagonists as set forth in §16-46-1 et seq. of this code; and
52 (38) Epinephrine auto-injector availability and use as set forth in §16-50-1 et seq. of this
53 code.

§16-1-5. State health officer; appointment; qualifications; term.

1 [Repealed]

§16-1-5a. Creation of the Bureau for Public Health.

1 Effective the first day of July, 2019, the Bureau for Public Health is created and
2 continued within the Department of Health and Compliance.

§16-1-5b. Commissioner; appointment; qualifications.

- 1 (a) There is created the position of commissioner. The commissioner shall:
2 (1) Be appointed by the Governor with advice and consent of the Senate;
3 (2) Report directly to the secretary;
4 (3) Serve at the will and pleasure of the Governor;
5 (4) Be a physician licensed pursuant to the laws of this state or hold a doctorate degree in
6 public health administration;
7 (5) Serve on a full-time basis with the duties and responsibilities as set forth in this chapter
8 and shall not engage in any other profession or occupation, including the holding of a political
9 office in the state either by election or appointment, while serving as commissioner; and
10 (6) Not be actively engaged or employed in any other business, vocation or employment;
11 (b) Before entering upon the discharge of the duties as commissioner, the commissioner
12 shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution
13 of West Virginia.
14 (c) The commissioner shall receive:
15 (1) A reasonable and competitive compensation package to be established by the

16 Governor; and

17 (2) Reimbursement for expenses under the standard state travel regulations.

§16-1-6. Powers and duties of the commissioner.

18 ~~The commissioner is the chief executive, administrative and fiscal officer of the Bureau for~~
19 ~~Public Health and has the following powers and duties:~~

20 ~~(a) To supervise and direct the fiscal and administrative matters of the bureau, and in that~~
21 ~~regard and in accordance with law, employ, fix the compensation of and discharge all persons~~
22 ~~necessary for the proper execution of the public health laws of this state and the efficient and~~
23 ~~proper discharge of the duties imposed upon, and execution of powers vested in the~~
24 ~~commissioner by law and as directed by the secretary;~~

25 ~~(b) To enforce all laws of this state concerning public health; to that end, the commissioner~~
26 ~~shall make, or cause to be made, investigations and inquiries respecting the cause of disease,~~
27 ~~especially of epidemics and endemic conditions, and the means of prevention, suppression or~~
28 ~~control of those conditions; the source of sickness and mortality, and the effects of environment,~~
29 ~~employment, habits and circumstances of life on the public health.~~

30 ~~The commissioner shall further make, or cause to be made, inspections and examinations~~
31 ~~of food, drink and drugs offered for sale or public consumption in the manner the commissioner~~
32 ~~considers necessary to protect the public health and shall report all violations of laws and rules~~
33 ~~relating to the law to the prosecuting attorney of the county in which the violations occur;~~

34 ~~(c) To make complaint or cause proceedings to be instituted against any person,~~
35 ~~corporation or other entity for the violation of any public health law before any court or agency,~~
36 ~~without being required to give security for costs; the action may be taken without the sanction of~~
37 ~~the prosecuting attorney of the county in which the proceedings are instituted or to which the~~
38 ~~proceedings relate;~~

39 ~~(d) To promote the provision of essential public health services to citizens of this state;~~

40 ~~(e) To monitor the administration, operation and coordination of the local boards of health~~

41 and local health officers;

42 ~~(f) To develop and maintain a state plan of operation that sets forth the needs of the state~~
43 ~~in the areas of public health; goals and objectives for meeting those needs; methods for achieving~~
44 ~~the stated goals and objectives; and needed personnel, funds and authority for achieving the~~
45 ~~goals and objectives;~~

46 ~~(g) To collect data as may be required to foster knowledge on the citizenry's health status,~~
47 ~~the health system and costs of health care;~~

48 ~~(h) To delegate to any appointee, assistant or employee any and all powers and duties~~
49 ~~vested in the commissioner, including, but not limited to, the power to execute contracts and~~
50 ~~agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the~~
51 ~~acts of his or her appointees, assistants and employees;~~

52 ~~(i) To transfer at the direction of the secretary, notwithstanding other provisions of this~~
53 ~~code, any patient or resident between hospitals and facilities under the control of the~~
54 ~~commissioner and, by agreement with the state Commissioner of Corrections and otherwise in~~
55 ~~accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state~~
56 ~~Commissioner of Corrections;~~

57 ~~(j) To make periodic reports to the Governor and to the Legislature relative to specific~~
58 ~~subject areas of public health, the state facilities under the supervision of the commissioner, or~~
59 ~~other matters affecting the public health of the people of the state, at the direction of the secretary;~~

60 ~~(k) At the direction of the secretary, to accept and use for the benefit of the health of the~~
61 ~~people of this state, any gift or devise of any property or thing which is lawfully given: *Provided*,~~
62 ~~That if any gift is for a specific purpose or for a particular state hospital or facility it shall be used~~
63 ~~as specified. Any profit which may arise from any gift or devise of any property or thing shall be~~
64 ~~deposited in a special revenue fund with the state Treasurer and shall be used only as specified~~
65 ~~by the donor or donors;~~

66 ~~(l) To acquire by condemnation or otherwise any interest, right, privilege, land or~~

67 improvement and hold title to the land or improvement, for the use or benefit of the state or a state
68 hospital or facility, and, by and with the consent of the Governor, and at the direction of the
69 secretary, to sell, exchange or otherwise convey any interest, right, privilege, land or improvement
70 acquired or held by the state, state hospital or state facility and deposit the proceeds from the
71 sale, exchange or other conveyance into the hospital services revenue account. Any
72 condemnation proceedings shall be conducted pursuant to chapter fifty-four of this code;

73 (m) ~~To inspect and enforce rules to control the sanitary conditions of and license all~~
74 ~~institutions and health care facilities as set forth in this chapter, including, but not limited to,~~
75 ~~schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,~~
76 ~~factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places~~
77 ~~open to the general public and inviting public patronage or public assembly, or tendering to the~~
78 ~~public any item for human consumption and places where trades or industries are conducted;~~

79 (n) ~~To make inspections, conduct hearings, and to enforce the legislative rules concerning~~
80 ~~occupational and industrial health hazards, the sanitary condition of streams, sources of water~~
81 ~~supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected~~
82 ~~with the supplies, facilities or systems without regard to whether they are publicly or privately~~
83 ~~owned; and to make inspections, conduct hearings and enforce the legislative rules concerning~~
84 ~~the design of chlorination and filtration facilities and swimming pools;~~

85 (o) ~~To provide in accordance with this subdivision and the definitions and other provisions~~
86 ~~of article one-a, chapter twenty-seven of this code, and as directed by the secretary, for a~~
87 ~~comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers;~~
88 ~~for research into the cause and prevention of alcoholism and drug abuse; for the training and~~
89 ~~employment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers;~~
90 ~~and for the education of the public concerning alcoholism and drug abuse;~~

91 (p) ~~To provide in accordance with this subdivision for a program for the care, treatment~~
92 ~~and rehabilitation of the parents of sudden infant death syndrome victims; for the training and~~

93 ~~employment of personnel to provide the requisite rehabilitation of parents of sudden infant death~~
94 ~~syndrome victims; for the education of the public concerning sudden infant death syndrome; for~~
95 ~~the responsibility of reporting to the Legislature on a quarterly basis the incidence of sudden infant~~
96 ~~death syndrome cases occurring in West Virginia; for the education of police, employees and~~
97 ~~volunteers of all emergency services concerning sudden infant death syndrome; for the state~~
98 ~~sudden infant death syndrome advisory council to develop regional family support groups to~~
99 ~~provide peer support to families of sudden infant death syndrome victims; and for requesting~~
100 ~~appropriation of funds in both federal and state budgets to fund the sudden infant death syndrome~~
101 ~~program;~~

102 ~~(q) To establish and maintain a state hygienic laboratory as an aid in performing the duties~~
103 ~~imposed upon the commissioner, and to employ chemists, bacteriologists, and other employees~~
104 ~~that may be necessary to properly operate the laboratory. The commissioner may establish~~
105 ~~branches of the state laboratory at any points within the state that are necessary in the interest of~~
106 ~~the public health;~~

107 ~~(r) To establish and fund a uniform health professionals data system to collect and~~
108 ~~maintain uniform data on all health professionals in the state. This data shall include, but not be~~
109 ~~limited to, the following information about each health professional: His or her name, profession,~~
110 ~~the area of the state where he or she is practicing, his or her educational background, his or her~~
111 ~~employer's name, and number of years practicing within the profession. The boards provided for~~
112 ~~in articles three, four, four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen, sixteen, twenty,~~
113 ~~twenty-one, twenty-three, twenty-eight, thirty-one, thirty-two, thirty-four, thirty-five, thirty-six and~~
114 ~~thirty-seven, chapter thirty of this code shall annually collect the data on health professionals~~
115 ~~under their jurisdiction in the format prescribed by the commissioner. Each board shall pay to the~~
116 ~~bureau annually, an amount determined by the commissioner to be a pro rata portion, for~~
117 ~~anticipated expenses to establish and operate the uniform health professionals data system~~
118 ~~required by this section. The commissioner may standardize data collection methods if necessary~~

119 ~~to implement the provisions of this section. The commissioner shall publish annually and make~~
120 ~~available, upon request, a report setting forth the data which was collected the previous year;~~
121 ~~areas of the state which the collected data indicates have a shortage of health professionals; and~~
122 ~~projections, based upon the collected data, as to the need for more health professionals in certain~~
123 ~~areas;~~

124 ~~(c) To expend, for the purpose of performing the public health duties imposed on the~~
125 ~~bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may~~
126 ~~make advance payments to public and nonprofit health services providers when the commissioner~~
127 ~~determines it is necessary for the initiation or continuation of public health services. The advance~~
128 ~~payments, being in derogation of the principle of payment only after receipt of goods or services,~~
129 ~~shall be authorized only after serious consideration by the commissioner of the necessity of the~~
130 ~~advance payments and shall be for a period no greater than ninety days in advance of rendition~~
131 ~~of service or receipt of goods and continuation of health services; and~~

132 ~~(t) To exercise all other powers delegated to the commissioner by the secretary or by this~~
133 ~~chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities~~
134 ~~necessary and incident to the authority and area of concern entrusted to the bureau or the~~
135 ~~commissioner.~~

136 (a) The commissioner is the chief executive, administrative and fiscal officer of the Bureau
137 for Public Health, the commissioner shall:

138 (1) Efficiently and properly execute and discharge the powers and duties imposed upon
139 and vested in him or her by law and as directed by the secretary;

140 (2) Supervise and direct the fiscal and administrative matters of the bureau;

141 (3) Employ, fix the compensation of and discharge all persons necessary for the proper
142 execution of the public health laws of this state. This shall include the power to:

143 (A) Appoint deputies and assistants to supervise the bureau's programs and such other
144 assistants and employees as may be necessary for the efficient operation of the bureau and all

145 its programs.

146 (B) Delegate to any of his or her appointees, assistants or employees all powers and duties
147 vested in the commissioner, including the power to execute contracts and agreements in the
148 name of the bureau as provided in this article. The commissioner shall be responsible for the
149 acts of such appointees, assistants and employees.

150 (4) Enforce all laws of this state concerning public health;

151 (5) Make, or cause to be made, investigations and inquiries respecting the cause of
152 disease, especially of epidemics and endemic conditions, and the means of prevention,
153 suppression or control of those conditions; the source of sickness and mortality, and the effects
154 of environment, employment, habits and circumstances of life on the public health;

155 (6) Inspect and examine food, drink and drugs offered for sale or public consumption in
156 the manner he or she considers necessary to protect the public health and shall report all
157 violations of laws and rules relating to the law to the prosecuting attorney of the county in which
158 a violation occurs;

159 (7) File a complaint or cause proceedings to be instituted against any person, corporation
160 or other entity for the violation of any public health law before any court or agency, without being
161 required to give security for costs. These actions may be taken without the sanction of the
162 prosecuting attorney of the county in which the proceedings are instituted or to which the
163 proceedings relate;

164 (8) Promote the provision of essential public health services to citizens of this state;

165 (9) Monitor the administration, operation and coordination of the local boards of health and
166 local health officers;

167 (10) Develop and maintain a state plan of operation that sets forth the needs of the state
168 in the areas of public health; goals and objectives for meeting those needs; methods for achieving
169 the stated goals and objectives; and needed personnel, funds and authority for achieving the
170 goals and objectives;

171 (11) Collect data as may be required to foster knowledge on the health status of the
172 citizens of West Virginia, the health system and costs of health care in this state;

173 (12) Delegate to any appointee, assistant or employee any and all powers and duties
174 vested in the commissioner, including, but not limited to, the power to execute contracts and
175 agreements in the name of the bureau. The commissioner is responsible for the acts of his or her
176 appointees, assistants and employees;

177 (13) Notwithstanding any provision of this code to the contrary, transfer any patient or
178 resident between hospitals and facilities under the control of the commissioner and by agreement
179 with the state Commissioner of Corrections and, in accordance with law, accept a transfer of a
180 resident of a facility under the jurisdiction of the state Commissioner of Corrections.

181 (14) Make periodic reports to the Governor and to the Legislature relative to specific
182 subject areas of public health, the state facilities under the supervision of the commissioner, or
183 other matters affecting the public health of the people of the state;

184 (15) Accept and use for the benefit of the health of the people of this state, any gift or
185 devise of any property or thing which is lawfully given. If any gift is for a specific purpose or for a
186 particular state hospital or facility, it shall be used as specified. Any profit which may arise from
187 any gift or devise of any property or thing shall be deposited in a special revenue fund with the
188 state Treasurer and shall be used only as specified by the donor or donors;

189 (16) Inspect, license and enforce rules to control the sanitary conditions of all institutions
190 and health care facilities as set forth in this chapter. This shall include, but is not limited to,
191 schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,
192 factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places
193 open to the general public and inviting public patronage or public assembly, or tendering to the
194 public any item for human consumption and places where trades or industries are conducted;

195 (17) (A) Make inspections, conduct hearings, and enforce legislative rules concerning
196 occupational and industrial health hazards, the sanitary condition of streams, sources of water

197 supply, sewerage facilities, and plumbing systems;

198 (B) Establish the qualifications of personnel connected with the supplies, facilities or
199 systems without regard to whether they are publicly or privately owned; and

200 (C) To make inspections, conduct hearings and enforce legislative rules concerning the
201 design of chlorination and filtration facilities and swimming pools;

202 (18) Provide in accordance with this chapter and the definitions and other provisions of
203 §27-1A-1 et seq. of this code:

204 (A) For a comprehensive program for the care, treatment and rehabilitation of alcoholics
205 and drug abusers;

206 (B) For research into the cause and prevention of alcoholism and drug abuse;

207 (C) For the training and employment of personnel to provide the requisite rehabilitation of
208 alcoholics and drug abusers; and

209 (D) For the education of the public concerning alcoholism and drug abuse;

210 (19) Provide in accordance with this chapter:

211 (A) For a program for the care, treatment and rehabilitation of the parents of sudden infant
212 death syndrome victims;

213 (B) For the training and employment of personnel to provide the requisite rehabilitation of
214 parents of sudden infant death syndrome victims;

215 (C) For the education of the public concerning sudden infant death syndrome;

216 (D) For the responsibility of reporting to the Legislative Oversight Commission on Health
217 and Human Resource Accountability on a quarterly basis the incidence of sudden infant death
218 syndrome cases occurring in West Virginia;

219 (E) For the education of police, employees and volunteers of all emergency services
220 concerning sudden infant death syndrome;

221 (F) For the state sudden infant death syndrome advisory council to develop regional family
222 support groups to provide peer support to families of sudden infant death syndrome victims; and

223 (G) For requesting appropriation of funds in both federal and state budgets to fund the
224 sudden infant death syndrome program;

225 (20) Establish and maintain a state hygienic laboratory as an aid in performing the duties
226 of the commissioner, and to employ chemists, bacteriologists, and other employees that may be
227 necessary to properly operate the laboratory. The commissioner may establish branches of the
228 state laboratory at any points within the state that are necessary in the interest of the public health;

229 (21) (A) Establish and fund a uniform health professionals data system to collect and
230 maintain uniform data on all health professionals in this state. This data shall include, but not be
231 limited to, the following information about each health professional:

232 (i) His or her name;

233 (ii) Profession;

234 (iii) The area of the state where he or she is practicing;

235 (iv) His or her educational background;

236 (v) His or her employer's name; and

237 (vi) The number of years practicing within the profession.

238 (B) The boards provided for in §30-3-1 et seq., §30-4-1 et seq., §30-4A-1 et seq., §30-5-
239 1 et seq., §30-7-1 et seq., §30-7A-1 et seq., §30-14-1 et seq., §30-14A-1 et seq., §30-15-1 et
240 seq., §30-16-1 et seq., §30-20-1 et seq., §30-21-1 et seq., §30-23-1 et seq., §30-28-1 et seq.,
241 §30-31-1 et seq., §30-32-1 et seq., §30-34-1 et seq., §30-35-1 et seq., §30-36-1 et seq. and §30-
242 37-1 et seq. of this code shall annually collect the data on health professionals under their
243 jurisdiction in the format prescribed by the commissioner.

244 (C) Each board shall pay to the bureau annually, an amount determined by the
245 commissioner to be a pro rata portion, for anticipated expenses to establish and operate the
246 uniform health professionals data system required by this article.

247 (D) The commissioner may standardize data collection methods if necessary to implement
248 the provisions of this section.

249 (E) The commissioner shall publish annually and make available upon request, a report
250 setting forth the data which was collected the previous year; areas of the state which the collected
251 data indicates have a shortage of health professionals; and projections, based upon the collected
252 data, as to the need for more health professionals in certain areas;

253 (24) (A) Expend any sums appropriated by the Legislature for the purpose of performing
254 the public health duties imposed on the bureau, or authorized by law.

255 (B) The commissioner may make advance payments to public and nonprofit health
256 services providers when the commissioner determines it is necessary for the initiation or
257 continuation of public health services.

258 (C) The advance payments, being in derogation of the principle of payment only after
259 receipt of goods or services, shall be authorized only after serious consideration by the
260 commissioner of the necessity of the advance payments.

261 (D) Shall be for a period no greater than ninety days in advance of rendition of service or
262 receipt of goods and continuation of health services;

263 (25) To make periodic reports to the secretary, Governor and to the Legislature as required
264 by this chapter; and

265 (26) Exercise all other powers delegated to the commissioner by the secretary or by this
266 chapter or otherwise in this code to enforce all health laws, and to pursue all other activities
267 necessary and incident to the authority and area of concern entrusted to the bureau or the
268 commissioner.

269 (b) The commissioner is authorized and empowered to accept and use for the benefit of
270 the bureau any gift or devise of any property or thing which lawfully may be given. Any gift or
271 devise of any property or thing which lawfully may be given and whatever profit may arise from
272 its use or investment shall be deposited in a special revenue fund with the State Treasurer, and
273 shall be used only as specified by the donor or donors.

§16-1-6a. Organization and employees.

1 (a) The commissioner shall organize the work of the bureau in such offices or other
2 organizational units as he or she may determine to be necessary for effective and efficient
3 operation.

4 (b) The commissioner shall employ a sufficient number of employees so as to provide for
5 the effective and efficient operation of the bureau.

6 (c) The secretary may transfer employees and resources of the department to the bureau
7 as may be necessary to fulfill the duties and responsibilities of the bureau pursuant to this chapter.
8 The secretary may not transfer employees of other divisions and agencies within the department
9 to the bureau without a prior finding that the office or position held by the employee may be
10 eliminated and until the office or position is, in fact, eliminated.

11 (d) The commissioner, if he or she deems such action necessary, may hire legal counsel
12 for the bureau, notwithstanding the provisions of §5-3-2 of this code or any other code provision
13 to the contrary, or may request the Attorney General to appoint counsel who shall perform such
14 duties as may be required by the bureau. The Attorney General, in pursuance of such request,
15 may select and appoint counsel to serve during the will and pleasure of the Attorney General, and
16 shall be paid out of any funds allocated and appropriated to the bureau.

17 (e) The commissioner may employ such staff or employees as may be necessary to
18 administer and enforce this chapter.

§16-1-6b. Supervisory responsibilities of the commissioner.

1 The commissioner shall have control and supervision of the bureau and shall be
2 responsible for the work of each of its organizational units. Each organizational unit shall be
3 headed by an employee of the bureau appointed by the commissioner who shall be responsible
4 to the commissioner for the work of his or her organizational unit.

§16-1-6c. General powers and duties of the Bureau for Public Health.

5 In carrying out the policies and procedures for enforcing the provisions of this chapter, the
6 bureau shall have the following power and authority:

7 (1) To establish policies and procedures for governing the administration of the bureau.

8 (2) To formulate standard fiscal procedures and make recommendations for improvement

9 of the bureau;

10 (3) To provide for a procedure for supplies and equipment for the bureau;

11 (4) To act as a liaison with other state entities and private groups with an interest in medical
12 assistance; and

13 (5) To perform any other duties assigned to the bureau by the secretary.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (a) "Basic public health services" means those services that are necessary to protect the
4 health of the public and that a local board of health must provide. The three areas of basic public
5 health services are communicable and reportable disease prevention and control, community
6 health promotion, and environmental health protection;

7 (b) "Bureau" means the Bureau for Public Health in the Department of Health and Human
8 ~~Resources~~ Compliance;

9 (c) "Clinical and categorical programs" means those services provided to individuals of
10 specified populations and usually focus on health promotion or disease prevention. These
11 services are not considered comprehensive health care but focus on specific health issues such
12 as breast and cervical cancer, prenatal and pediatric health services and home health services;

13 (d) "Combined local board of health" is one form of organization for a local board of health
14 and means a board of health serving any two or more counties or any county or counties and one
15 or more municipalities within or partially within the county or counties;

16 (e) "Commissioner" means the Commissioner of the Bureau for Public Health; ~~who is the~~

17 ~~state health officer~~

18 (f) "Communicable and reportable disease prevention and control" is one of three areas
19 of basic public health services each local board of health must offer. Services shall include
20 disease surveillance, case investigation and follow-up, outbreak investigation, response to
21 epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine
22 preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable diseases;

23 (g) "Community health promotion" is one of three areas of basic public health services
24 each local board of health must offer. Services shall include assessing and reporting community
25 health needs to improve health status, facilitating community partnerships including identifying
26 the community's priority health needs, mobilization of a community around identified priorities,
27 and monitoring the progress of community health education services;

28 (h) "County board of health" is one form of organization for a local board of health and
29 means a local board of health serving a single county;

30 (i) "Department" means the West Virginia Department of Health and ~~Human Resources~~
31 Compliance;

32 (j) "Director" or "director of health" means the ~~state health officer~~ commissioner.
33 Administratively within the department, the Bureau for Public Health through its commissioner
34 carries out the public health function of the department, unless otherwise assigned by the
35 secretary;

36 (k) "Environmental health protection" is one of three areas of basic public health services
37 each local board of health must offer. Services shall include efforts to protect the community from
38 environmental health risks including, inspection of housing, institutions, recreational facilities,
39 sewage and wastewater facilities; inspection and sampling of drinking water facilities; and
40 response to disease outbreaks or disasters;

41 (l) "Enhanced public health services" means services that focus on health promotion
42 activities to address a major health problem in a community, are targeted to a particular population

43 and assist individuals in this population to access the health care system, such as lead and radon
44 abatement for indoor air quality and positive pregnancy tracking. Enhanced public health services
45 are services a local health department may offer;

46 (m) "Local board of health," "local board" or "board" means a board of health serving one
47 or more counties or one or more municipalities or a combination thereof;

48 (n) "Local health department" means the staff of the local board of health;

49 (o) "Local health officer" means the individual physician with a current West Virginia
50 license to practice medicine who supervises and directs the activities of the local health
51 department services, staff and facilities and is appointed by the local board of health with approval
52 by the commissioner;

53 (p) "Municipal board of health" is one form of organization for a local board of health and
54 means a board of health serving a single municipality;

55 (q) "Performance-based standards" means generally accepted, objective standards such
56 as rules or guidelines against which a local health department's level of performance can be
57 measured;

58 (r) "Primary care services" means health care services, including medical care, that
59 emphasize first contact patient care and assume overall and ongoing responsibility for the patient
60 in health maintenance and treatment of disease. Primary care services are services that local
61 boards of health may offer if the board has determined that an unmet need for primary care
62 services exists in its service area. Basic public health services funding may not be used to support
63 these services;

64 (s) "Program plan" or "plan of operation" means the annual plan for each local board of
65 health that must be submitted to the commissioner for approval;

66 (t) "Secretary" means the Secretary of the ~~state~~ Department of Health and Human
67 Resources Compliance; and

68 (u) "Service area" means the territorial jurisdiction of the local board of health.

§16-2-9. Local board of health; terms of appointment; reappointment; oath of office; vacancies; removal; compensation; expenses.

1 (a) The term of office for members selected and appointed to a local board of health
2 pursuant to the provisions of this article is five years. Members may serve until their duly qualified
3 successors are selected and appointed by vote of the original appointing authority. Members may
4 be reappointed for additional terms of five years. Board members' oaths of office shall be duly
5 recorded before entering into or discharging any duties of the office.

6 (b) Any vacancy on any local board of health shall be filled by appointment of the original
7 appointing authority. This appointment is for the unexpired term.

8 (c) A local board of health may remove any of its members pursuant to the provisions of
9 its lawfully adopted bylaws and shall remove any of its members for official misconduct,
10 incompetence, neglect of duty, gross immorality or the revocation of any state professional license
11 or certification. A local board of health, or any of its members may be removed by the ~~state health~~
12 ~~officer~~ commissioner for failure or refusal to comply with duties as set forth by statute or rule.
13 Upon removal, a successor or successors to the member or members removed shall immediately
14 be appointed by the original appointing body pursuant to the provisions of this article.

15 (d) Each member of a local board of health may receive compensation as determined by
16 the local board for attending meetings of and other activities for the board as required by law:
17 *Provided*, That this compensation may not exceed \$100 per day. Each member of a local board
18 may be reimbursed for all reasonable and necessary travel and other expenses actually incurred
19 by the member in the performance of duties as a member of the local board.

**ARTICLE 2G. SPECIAL SUPPLEMENTARY FOOD PROGRAM FOR WOMEN,
INFANTS AND CHILDREN (WIC).**

§16-2G-1. Voucher or coupon redemption and payment.

1 [Repealed]

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

**§16-3-4. Compulsory immunization of school children; information disseminated;
offenses; penalties.**

1 (a) Whenever a resident birth occurs, the commissioner shall promptly provide parents of
2 the newborn child with information on immunizations mandated by this state or required for
3 admission to a public, private and parochial school in this state or a state-regulated child care
4 center.

5 (b) Except as hereinafter provided, a child entering school or a state-regulated child care
6 center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis,
7 mumps, diphtheria, polio, rubella, tetanus and whooping cough.

8 (c) No child or person may be admitted or received in any of the schools of the state or a
9 state-regulated child care center until he or she has been immunized against chickenpox,
10 hepatitis-b, measles, meningitis, mumps, diphtheria, polio,, rubella, tetanus and whooping cough
11 or produces a certificate from the commissioner granting the child or person an exemption from
12 the compulsory immunization requirements of this section.

13 (d) Any school or state-regulated child care center personnel having information
14 concerning any person who attempts to be enrolled in a school or state-regulated child care center
15 without having been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,
16 diphtheria, polio, rubella, tetanus and whooping cough shall report the names of all such persons
17 to the commissioner.

18 (e) Persons may be provisionally enrolled under minimum criteria established by the
19 commissioner so that the person's immunization may be completed while missing a minimum
20 amount of school. No person shall be allowed to enter school without at least one dose of each
21 required vaccine.

22 (f) County health departments shall furnish the biologicals for this immunization for
23 children of parents or guardians who attest that they cannot afford or otherwise access vaccines
24 elsewhere.

25 (g) Health officers and physicians who provide vaccinations must present the person
26 vaccinated with a certificate free of charge showing that they have been immunized against
27 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and
28 whooping cough, or he or she may give the certificate to any person or child whom he or she
29 knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,
30 diphtheria, polio, rubella, tetanus and whooping cough.

31 (h) The commissioner is authorized to grant, renew, condition, deny, suspend or revoke
32 exemptions to the compulsory immunization requirements of this section, on a statewide basis,
33 upon sufficient medical evidence that immunization is contraindicated or there exists a specific
34 precaution to a particular vaccine.

35 (1) A request for an exemption to the compulsory immunization requirements of this
36 section must be accompanied by the certification of a licensed physician stating that the physical
37 condition of the child is such that immunization is contraindicated or there exists a specific
38 precaution to a particular vaccine.

39 (2) The commissioner is authorized to appoint and employ an Immunization Officer to
40 make determinations on request for an exemption to the compulsory immunization requirements
41 of this section, on a statewide basis, and delegate to the Immunization Officer the authority
42 granted to the commissioner by this subsection.

43 (3) A person appointed and employed as the Immunization Officer must be a physician
44 licensed under the laws of this state to practice medicine.

45 (4) The Immunization Officer's decision on a request for an exemption to the compulsory
46 immunization requirements of this section may be appealed to the ~~State Health Officer~~
47 commissioner.

48 (5) The final determination of the ~~State Health Officer~~ commissioner is subject to a right of
49 appeal pursuant to the provisions of §29A-5-1 *et seq.* of this code.

50 (i) A physician who provides any person with a false certificate of immunization against
51 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio,, rubella, tetanus and
52 whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$25
53 nor more than \$100.

ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-2. Definitions.

1 As used in this article:

2 (1) "Active Tuberculosis" or "Tuberculosis" means a communicable disease caused by the
3 bacteria, *Mycobacterium tuberculosis*, which is demonstrated by clinical, bacteriological,
4 radiographic or epidemiological evidence. An infected person whose tuberculosis has progressed
5 to active disease may experience symptoms such as coughing, fever, fatigue, loss of appetite
6 and weight loss and is capable of spreading the disease to others if the tuberculosis germs are
7 active in the lungs or throat.

8 (2) "Bureau" means the Bureau for Public Health in the Department of Health and ~~Human~~
9 ~~Resources-Compliance~~;

10 (3) "Commissioner" means the Commissioner of the Bureau for Public Health; ~~who is the~~
11 ~~state health officer~~

12 (4) "Local board of health," "local board" or "board" means a board of health serving one
13 or more counties or one or more municipalities or a combination thereof;

14 (5) "Local health department" means the staff of the local board of health; and

15 (6) "Local health officer" means the individual physician with a current West Virginia
16 license to practice medicine who supervises and directs the activities of the local health

17 department services, staff and facilities and is appointed by the local board of health with approval
18 by the commissioner.

19 (7) "Tuberculosis suspect" means a person who is suspected of having tuberculosis
20 disease due to any or all of the following medical factors: the presence of symptoms, the result of
21 a positive skin test, risk factors for tuberculosis, or findings on an abnormal chest x ray, during
22 the time period when an active tuberculosis disease diagnosis is pending.

ARTICLE 4A. PRENATAL EXAMINATION.

§16-4A-1. Compulsory serologic test.

1 [Repealed]

§16-4A-2. Attending physician to obtain blood specimen.

1 [Repealed]

§16-4A-3. Identification of specimen; report.

1 [Repealed]

§16-4A-4. Notation on birth certificate.

1 [Repealed]

§16-4A-5. Offenses; penalty.

1 [Repealed]

§16-4A-6. Separability.

1 [Repealed]

ARTICLE 4E. UNIFORM MATERNAL SCREENING ACT.

§16-4E-1. Legislative findings.

1 [Repealed]

§16-4E-2. Establishment of an advisory council on maternal risk assessment.

1 [Repealed]

§16-4E-3. Responsibilities of the advisory council on maternal risk assessment.

1 [Repealed]

§16-4E-4. Legislative rule-making authority.

1 [Repealed]

§16-4E-5. Applicability of the screening tool.

1 [Repealed]

§16-4E-6. Confidentiality of screening tool.

1 [Repealed]

ARTICLE 8. ELECTROLOGISTS ELECTIVE BODY MODIFICATION.

§16-8-1. Definitions.

1 The following words shall have the following meaning:

2 (1) "Adequate ventilation" means a free and unrestricted circulation of fresh air throughout
3 a body piercing studio or a tattoo studio and the expulsion of foul or stagnant air.

4 (2) "Antibacterial solution" means any solution used to retard the growth of bacteria
5 approved for application to human skin and includes all products so labeled.

6 (3) "Antimicrobial solution" means any solution used to retard the growth of
7 microorganisms.

8 (4) "Body piercing" means to puncture the skin for the purpose of creating a hole to be
9 decorated or adorned, but does not include the use of a mechanized, presterilized ear-piercing
10 system that penetrates the outer perimeter or lobe of the ear or both.

11 (5) "Body piercing studio" means any room or space where body piercing is practiced or
12 where the business of body piercing or any part thereof is conducted.

13 (6) "Electrology" means the art and practice relating to the removing of hair from the
14 normal skin of the body by the application of an electric current to the hair papilla by means of a
15 needle or needles, or by the application of an electronic tweezer having the electrical current flow
16 through the hair and the follicle as in conventional electrolysis.

17 (7) "Electrolysis" means the process by which hair is removed from the normal skin by the
18 application of an electric current to the hair root by means of a needle, needles or electronic
19 tweezer, whether the process employs direct electric current to the hair root or by means of
20 shortwave alternating electric current.

21 (8) "Germicidal solution" means any solution which destroys germs and is so labeled.

22 (9) "Minor" means any person under the age of eighteen years.

23 (10) "Operator" means any person who is registered with the state to operate, control or
24 manage a body piercing studio, and whose studio has been issued an operating permit by the
25 local board of health.

26 (11) "Photo therapy device" means a device used for exposure to daylight or to specific
27 wavelengths of light using lasers, light emitting diodes, fluorescent lamps, dichroic lamps or very
28 bright, full spectrum light, usually controlled with various devices.

29 (12) "Single use" means products, instruments or items that are used one time on one
30 client and then properly disposed of in accordance with rules of the department regarding the
31 disposal of medical wastes.

32 (13) "Standard precautions" means that all blood and body fluids are treated so as to
33 contain all blood-borne pathogens and all proper precautions are taken to prevent the spread of
34 any blood-borne pathogens.

35 (14) "Sterilization" means holding in an autoclave for twenty-five minutes at fifteen pounds
36 pressure at a temperature of two hundred fifty degrees Fahrenheit or one hundred twenty-one
37 degrees Celsius. This definition does not apply to the sterilization referenced in §16-8-6 (a)(1)(D)
38 of this code.

39 (15) "Tattoo" means to mark or color the skin by pricking in coloring matter so as to form
40 indelible marks or figures or by the production of scars.

41 (16) "Tattoo studio" means any room or space where tattooing is practiced or where the
42 business of tattooing or any part thereof is conducted.

43 (17) "Technician" means an individual who engages in the practice of body piercing.

44 (18) "Tanning device" means any equipment that emits radiation used for tanning of the
45 skin, such as a sun lamp, tanning booth or tanning bed, and includes any accompanying
46 equipment, such as protective eye wear, timers and handrails.

47 (19) "Tanning facility" means any commercial location, place, area, structure or business
48 where a tanning device is used for a fee, membership dues or other compensation.

§16-8-2. Body piercing studio business.

1 (a) Effective with the passage of this article, any body piercing studio in West Virginia shall
2 obtain a West Virginia business registration certificate and shall register with the local or regional
3 board of health, request an inspection of the facility, and obtain an operating permit before
4 engaging in the business of body piercing.

5 (b) Each local or regional board of health shall conduct annual inspections of body piercing
6 studios to determine compliance with this article.

7 (c) Upon a determination by the board that the body piercing studio is in compliance with
8 the provisions of this article, the board shall issue to the body piercing studio an operating permit,
9 which shall be posted in a conspicuous place in the body piercing studio, clearly visible to the
10 general public.

11 (d) Upon a determination by the board that any body piercing studio is not in compliance
12 with the provisions of this article, or the rules promulgated hereunder, the board may order the
13 body piercing studio to cease operations until such time as the board determines that the body
14 piercing studio is in compliance.

15 (e) Nothing in this article may be construed as prohibiting any health care provider licensed
16 under chapter thirty of this code from performing any action within the scope of his or her practice,
17 or as restricting the lawful practice of medicine or surgery in this state.

§16-8-3. Tattoo studio business.

1 (a) Studio sanitation.

2 (1) The tattoo artist's hands shall be washed and then air blown or dried by single-use
3 towel prior to beginning work on each person or when interrupted in the process of working on a
4 person. In addition, disposable latex examination gloves shall be worn by the tattoo artist during
5 the tattooing process. The gloves shall be changed and properly disposed of each time there is
6 an interruption in the application of the tattoo, each time the gloves become torn or punctured or
7 whenever the ability of the gloves to function as a barrier is compromised.

8 (2) Cabinets for the storage of instruments, dyes, pigments, single-use articles, carbon,
9 stencils and other utensils shall be provided for each tattoo artist and shall be maintained in a
10 sanitary manner.

11 (3) Bulk single use articles shall be commercially packaged and handled in such a way as
12 to protect them from contamination. Storage of single-use articles may not be in toilet rooms or in
13 vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

14 (4) Work tables and chairs or benches shall be provided for each tattoo artist. The surface
15 of all work tables and chairs or benches shall be constructed of material which is smooth, light
16 colored, nonabsorbent, corrosive-resistant and easily sanitized. The work tables and chairs or
17 benches shall be sanitized with a germicidal solution after each tattoo application. All existing
18 tattoo studios on the effective date of the administrative regulation shall be exempt from the
19 required color of the work table.

20 (5) All materials applied to human skin shall be from single-use articles or transferred from
21 bulk containers to single-use containers and shall be disposed of after each use.

22 (6) No pets, including working dogs, guide dogs or security dogs from a certified trainer,
23 may be permitted in a tattoo studio workroom as defined in §16-8-304(c), of this code.

24 (b) Operation standards.

25 (1) Records.

26 (A) Proper records of tattoos administered shall be maintained for each patron by the
27 holder of the studio registration.

28 (B) A record shall be prepared for each patron prior to any procedure being performed
29 and shall include the patron's name and signature, address, age, date tattooed, design of the
30 tattoo, location of the tattoo on the patron's body and the name of the tattoo artist who performed
31 the work.

32 (C) Record entries shall be in ink or indelible pencil and shall be available for examination
33 by the inspecting authorities provided in subsection (e) of this section.

34 (D) Before tattoo administration, the owner or tattoo artist shall discuss with the patron the
35 risks involved in the tattoo requested, including the potential that a tattoo may interfere with the
36 clinical reading of a magnetic resonance imaging study, should the patron intending to be tattooed
37 ever encounter a medical need for such a study. The owner shall provide the patron with written
38 information regarding the possible complications that may arise from receiving a tattoo. The
39 written information shall be prepared by the department. Receipt of the information shall be
40 acknowledged in writing by the patron. The owner or tattoo artist shall also keep and maintain the
41 acknowledgment as part of the patron's record pursuant to the provisions of subdivision (E) of
42 this subsection.

43 (E) All records required by this section shall be kept on file for five years by the holder of
44 the studio registration for the studio in which the tattoo was performed.

45 (2) Consent.

46 (A) Prior written consent for tattooing of minors shall be obtained from a parent or
47 guardian.

48 (B) All written consents shall be kept on file for five years by the holder of the studio
49 registration for the tattoo studio in which the tattoo was performed.

50 (C) The person receiving the tattoo shall attest to the fact that he or she is not intoxicated
51 or under the influence of drugs or alcohol.

52 (3) Tattooing procedures.

53 (A) Printed instructions on the care of the skin after tattooing shall be given to each patron

54 as a precaution to prevent infection.

55 (B) A copy of the printed instructions shall be posted in a conspicuous place, clearly visible
56 to the person being tattooed.

57 (C) Each tattoo artist shall wear a clean outer garment, i.e., apron, smock, T shirt, etc.

58 (D) Tattoo artists who are experiencing diarrhea, vomiting, fever, rash, productive cough,
59 jaundice, draining or open skin infections such as boils which could be indicative of more serious
60 conditions such as, but not limited to, impetigo, scabies, hepatitis b, HIV or AIDS shall refrain from
61 tattooing activities until such time as they are no longer experiencing or exhibiting the
62 aforementioned symptoms.

63 (E) Before working on each patron, the fingernails and hands of the tattoo artist shall be
64 thoroughly washed and scrubbed with hot running water, antibacterial soap and an individual
65 hand brush that is clean and in good repair.

66 (F) The tattoo artist's hands shall be air blown dried or dried by a single use towel. In
67 addition, disposable latex examination gloves shall be worn during the tattoo process. The gloves
68 shall be changed each time there is an interruption in the tattoo application, the gloves become
69 torn or punctured or whenever their ability to function as a barrier is compromised.

70 (G) Only sterilized or single use, disposable razors shall be used to shave the area to be
71 tattooed.

72 (H) Immediately prior to beginning the tattoo procedure, the affected skin area shall be
73 treated with an antibacterial solution.

74 (I) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, the
75 acetate stencil shall be thoroughly cleaned and rinsed in a germicidal solution for at least 20
76 minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use.

77 (J) If a paper stencil is used by a tattoo artist for transferring the design to the skin, the
78 paper stencil shall be single use and disposable.

79 (K) If the design is drawn directly onto the skin, the design shall be applied with a single

80 use article only.

81 (4) Dyes or pigments.

82 (A) Only nontoxic sterile dyes or pigments shall be used and shall be prepared in sterilized
83 or disposable single use containers for each patron.

84 (B) After tattooing, the unused dye or pigment in the single use containers shall be
85 discarded along with the container.

86 (C) All dyes or pigments used in tattooing shall be from professional suppliers specifically
87 providing dyes or pigments for the tattooing of human skin.

88 (5) Sterilization of needles.

89 (A) A set of individual, sterilized needles shall be used for each patron.

90 (B) No less than twenty-four sets of sterilized needles and tubes shall be on hand for the
91 entire day or night operation. Unused sterilized instruments shall be resterilized at intervals of no
92 more than six months from the date of the last sterilization.

93 (C) Used, nondisposable instruments shall be kept in a separate, puncture resistant
94 container until brush scrubbed in hot water and soap and then sterilized by autoclaving.

95 (D) If used instruments are ultrasonically cleaned prior to being placed in the used
96 instrument container, they shall be ultrasonically cleaned and then rinsed under running hot water
97 prior to being placed in the used instrument container.

98 (E) The ultrasonic unit shall be sanitized daily with a germicidal solution.

99 (F) If used instruments are not ultrasonically cleaned prior to being placed in the used
100 instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in
101 hot water and soap and then sterilized by autoclaving.

102 (G) All nondisposable instruments, including the needle tubes, shall be sterilized and shall
103 be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized
104 shall be sealed in bags made specifically for the purpose of autoclave sterilization and shall
105 include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also

106 list the contents.

107 (H) Autoclave sterilization bags, with a color code indicator which changes color upon
108 proper steam sterilization, shall be utilized during the autoclave sterilization process.

109 (I) Instruments shall be placed in the autoclave in such a manner as to allow live steam to
110 circulate around them.

111 (J) No rusty, defective or faulty instruments shall be kept in the studio.

112 (6) Aftercare of tattoo.

113 The completed tattoo shall be washed with a single use towel saturated with an
114 antibacterial solution.

115 (c) Facilities and equipment.

116 (1) General physical environment.

117 (A) Tattoo studios shall have at least fifty footcandles of light and adequate ventilation.

118 Walls and ceilings shall be painted a light color.

119 (B) The floor of the tattoo workroom shall be constructed of impervious material. The floor
120 shall be swept and wet-mopped daily. Floors, walls or ceilings shall not be swept or cleaned while
121 tattooing is in operation.

122 (C) Convenient, clean and sanitary toilet and hand-washing facilities shall be made
123 accessible to customers.

124 (D) The building and equipment shall be maintained in a state of good repair at all times.
125 The studio premises shall be kept clean, neat and free of litter and rubbish.

126 (2) Workroom.

127 (A) Each tattoo studio shall have a workroom separate from a waiting room or any room
128 or rooms used for any other purpose. The workroom may not be used as a corridor for access to
129 other rooms. Patrons or customers shall be tattooed only in the workroom.

130 (B) The workroom shall be equipped with hot and cold running water, with one sink or
131 basin per artist operating at the same time.

132 (C) The sinks and basins shall be for the exclusive use of the tattoo artists for washing
133 their hands and preparing customers for tattooing. They shall be equipped with foot, wrist or
134 single-lever action controls, soap, a germicidal solution, single-use towels and individual hand
135 brushes clean and in good repair for each tattoo artist. All plumbing shall be in compliance with
136 industry standards.

137 (D) Persons may not consume any food or drink nor smoke in the workroom.

138 (d) Disposal of waste.

139 The tattoo studio operator shall comply with rules promulgated by the secretary regarding
140 the disposal of medical wastes.

141 (e) Registration requirements; inspections by local or regional boards of health; permit
142 fees.

143 (1) Tattoo studios in West Virginia shall obtain a West Virginia business registration
144 certificate and shall register with their local or regional board of health.

145 (2) Each local or regional board of health shall conduct annual inspections of each tattoo
146 studio to determine compliance with this article. Every person, firm or corporation operating a
147 tattoo studio in West Virginia shall apply to their local or regional board of health for the inspection.
148 The local or regional boards of health shall attempt to conduct the inspections within ten days of
149 the receipt of the request for inspection. If it is impracticable for the local or regional board of
150 health to conduct the investigation within ten days after receiving the application, the boards may
151 issue to the applicant a temporary operating permit which shall be valid for thirty days or until a
152 regular inspection is made, whichever occurs first.

153 (3) Upon a determination by the inspecting authority that any tattoo studio is not in
154 compliance with the provisions of this article, the inspection authority shall have the power to
155 order the tattoo studio to cease operations until a time as the inspecting authority determines that
156 the studio is in compliance.

157 (4) Upon a determination by the inspecting authority that the tattoo studio is in compliance

158 with the provisions of this article, there shall be issued to the studio an operating permit that shall
159 be posted in a conspicuous place, clearly visible to the general public.

160 (5) The fee for the issuance of an operating permit issued pursuant to this article shall be
161 \$200 and shall be paid by the tattoo studio receiving the permit. The fee shall be collected by and
162 paid to the local or regional boards of health.

§16-8-4. Tanning facilities.

1 (a) Operation standards.

2 (1) A tanning facility shall provide to any patron who wishes to use a tanning device located
3 within its tanning facility a disclosure and consent form relating to use of a tanning device that
4 contains the current United States Food and Drug Administration warning as follows:

5 “Danger. Ultraviolet Radiation. Follow instructions. Avoid overexposure. As with natural
6 sunlight, overexposure can cause eye and skin injury and allergic reactions. REPEATED
7 EXPOSURE MAY CAUSE PREMATURE AGING OF THE SKIN AND SKIN CANCER. WEAR
8 PROTECTIVE EYEWEAR; FAILURE TO DO SO MAY RESULT IN SEVERE BURNS OR LONG-
9 TERM INJURY TO THE EYES. Medications or cosmetics may increase your sensitivity to the
10 ultraviolet radiation. Consult physician before using tanning device if you are using medications
11 or have a history of skin problems or believe yourself especially sensitive to sunlight. If you do not
12 tan in the sun, you are unlikely to tan from use of this product.”

13 (2) The disclosure and consent form must have a place for the patron's signature and the
14 date. A signed and dated copy of the disclosure and consent form shall be maintained by the
15 tanning facility and remains valid for one year from the date it was signed.

16 (3) All patrons are required to present proof of age prior to use of a tanning device. Proof
17 of age shall be satisfied with a driver's license or other government-issued identification containing
18 the date of birth and a photograph of the individual. Persons under the age of eighteen may not
19 be permitted to use a tanning device.

20 (b) Local or regional health department authority to inspect.

21 Local or regional health departments shall have the authority to enter and inspect a
22 tanning facility to determine compliance with the requirements of this article.

23 (c) Exception for health care providers.

24 Nothing in this article may be construed as prohibiting any health care provider licensed
25 under chapter thirty of this code from performing any action within the scope of his or her practice
26 that results in prescribing the use of a photo therapy device to a patient regardless of the patient's
27 age for treatment of a medical condition.

§16-8-5. Penalties.

1 (a) Body piercing studio business.

2 (1) Any owner of a body piercing studio who does not obtain a West Virginia business
3 registration certificate, who does not register with the local or regional board of health, or who fails
4 to request an inspection as required by this article is guilty of a misdemeanor and, upon conviction
5 thereof, for a first offense, may have all of the body piercing equipment and paraphernalia
6 confiscated and shall be fined \$100.

7 (2) For a second offense, which is a misdemeanor, the owner may have all of the body
8 piercing equipment and paraphernalia confiscated and shall be fined not less than \$500 nor more
9 than \$1,000 or be imprisoned in the county or regional jail for not less than ten days nor more
10 than one year, or both fined and imprisoned.

11 (3) For a third offense, which is a misdemeanor, the owner shall have all the body piercing
12 equipment and paraphernalia confiscated, shall be fined not less than \$1,000 nor more than
13 \$5,000, or be imprisoned in the county or regional jail not less than thirty days nor more than one
14 year, or both fined and imprisoned.

15 (b) Tattoo studio business.

16 (1) Any owner of a tattoo studio who does not obtain a West Virginia business registration
17 certificate, who does not register with their local or regional board of health or who fails to request
18 an inspection as required by this article shall be guilty of a misdemeanor and, upon conviction

19 thereof, for a first offense, may have all of the tattoo equipment and paraphernalia confiscated
20 and shall be fined \$100.

21 (2) For a second offense, which is a misdemeanor, the owner may have all of the tattoo
22 equipment and paraphernalia confiscated and shall be fined not less than \$500 nor more than
23 \$1,000 or confined in a county or regional jail not less than ten days nor more than one year, or
24 both fined and imprisoned.

25 (3) For a third offense, which is a misdemeanor, the owner shall have all the tattoo
26 equipment and paraphernalia confiscated, shall be fined not less than \$1,000 nor more than
27 \$5,000, or confined in a county or regional jail not less than thirty days nor more than one year,
28 or both fined and imprisoned

29 (c) Tanning facilities.

30 (1) Any owner of a tanning facility who violates the requirements of this article is guilty of
31 a misdemeanor and, upon conviction thereof, for a first offense, shall be fined \$100.

32 (2) For a second offense, the owner is guilty of a misdemeanor and, upon conviction
33 thereof, shall be fined not less than \$250 nor more than \$500.

34 (3) For a third or subsequent offense, the owner is guilty of a misdemeanor and, upon
35 conviction thereof, shall be fined not less than \$500 nor more than \$1,000.

§16-8-6. Rulemaking.

1 The secretary shall propose rules for legislative approval in accordance with §29A-3-1 et
2 seq. of this code as follows:

3 (1) Body piercing studio business.

4 (A) General physical requirements for facilities and equipment, including requirements for
5 adequate ventilation and lighting;

6 (B) Record keeping requirements and forms;

7 (C) Written notification of the risks of body piercing procedures and minimum age
8 requirements;

9 (D) Body piercing procedures, including, but not limited to, safety and sterilization
10 procedures; the use of antimicrobial solutions, needles, single use instruments and other
11 instruments; the exercise of standard precautions; and instructions on the care of the skin after
12 body piercing procedures;

13 (E) Permitting requirements for operators and technicians, including fees for permits and
14 renewals of permits sufficient to cover the costs of inspecting facilities and administering this
15 article; and

16 (F) For the disposal of waste in compliance with the rules of the department regarding the
17 disposal of medical wastes.

18 (G) The rules required by this subsection may also include provisions on training or
19 educational requirements or materials; health screenings for technicians; and any other provisions
20 considered necessary to protect the public or assure adequate health and safety.

21 (H) The rules required by this subsection may also include limitations or prohibitions on
22 the performance of certain procedures, including, but not limited to, procedures referred to as
23 cutting, branding and scarification, which are identified as posing a risk to the public health and
24 safety.

25 (2) Eletrologists.

26 The secretary shall purpose rules to regulate eletrologists. These rules shall include, at a
27 minimum, requirements to be enforced by local or regional health authorities throughout the state
28 and may include any other provisions deemed necessary by the secretary for the health and
29 safety of the practice of electrology or electrolysis.

**ARTICLE 22. DETECTION AND CONTROL OF PHENYLKETONURIA,
GALACTOSEMIA, HYPOTHYROIDISM, AND CERTAIN OTHER DISEASES IN
NEWBORN CHILDREN.**

§16-22-1. Findings.

[Repealed]

§16-22-2. Program to combat intellectual disability or other severe health hazards; rules; facilities for making tests.

1 [Repealed]

§16-22-3. Tests for diseases specified by the state Public Health Commissioner; reports; assistance to afflicted children; Public Health Commissioner to propose rules.

1 [Repealed]

§16-22-4. Penalties for violating provisions of article.

1 [Repealed]

§16-22-5. Severability.

1 [Repealed]

§16-22-6. Effective date.

1 [Repealed]

ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.

§16-22A-1. Testing required.

1 [Repealed]

§16-22A-2. Rule making authorized.

1 [Repealed]

§16-22A-3. Fees for testing; payment of same.

1 [Repealed]

§16-22A-4. Hearing impairment testing advisory committee established.

1 [Repealed]

ARTICLE 22B. BIRTH SCORE PROGRAM.

§16-22B-1. Legislative findings; intent; purpose.

1 [Repealed]

§16-22B-2. Birth score program established.

1 [Repealed]

§16-22B-3. Determination of birth score; referral to physician.

1 [Repealed]

§16-22B-4. Rules.

1 [Repealed]

ARTICLE 24. STATE HEMOPHILIA PROGRAM.

§16-24-8. When payments for care and treatment of hemophiliacs may be made by director.

1 [Repealed]

ARTICLE 29E. LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY.

§16-29E-2. Legislative intent.

1 It is the intent of the Legislature that all actions taken pursuant to the provisions of this
2 article by the Legislature and the various agencies within the Department of Health and ~~Human~~
3 ~~Resources~~ Compliance, the Department of Healthcare Facilities and the Department of Human
4 Services serve the following core set of principles:

5 (1) That all health and social programs offered under state authority be coordinated to
6 maximize efficiencies and minimize competition within the various agencies thereby addressing
7 the needs of the citizens more effectively;

8 (2) That communication be facilitated among the various agencies within ~~the Department~~
9 ~~of Health and Human Resources~~ these departments and between ~~the department~~ these
10 departments and the Legislature;

11 (3) That policy changes, not made by legislative rule, be discussed with the commission
12 for purposes of coordinating those policies with existing programs and stated goals;

13 (4) That programs or policies implemented in accordance with federal mandates be

14 communicated to the commission;

15 (5) That in developing and implementing programs with private or federal grant moneys,
16 the various agencies communicate their efforts to the commission to ensure and facilitate future
17 state funding; and

18 (6) That agencies previously exempted from rule-making review by federal or state
19 statutes advise the commission of program changes which may affect the health and well-being
20 of the citizens of West Virginia.

§16-29E-3. Definitions.

1 As used in this article:

2 (a) "Agency" means those various agencies, authorities, boards, committees,
3 commissions or departments of ~~the Department of Health and Human Resources~~ the Department
4 of Healthcare Facilities, the Department of Health and Compliance and the Department of Human
5 Services with authority to promulgate legislative rules pursuant to this chapter that regulate health
6 care providers, practitioners or consumers; or those offering social services programs;

7 (b) "Commission" means the Legislative Oversight commission on health and human
8 resources accountability; and

9 (c) "Department" or "departments" means the ~~Department of Health and Human~~
10 ~~Resources.~~ Department of Healthcare Facilities, the Department of Health and Compliance and
11 the Department of Human Services.

§16-29E-5. Powers and duties of commission.

1 (a) The powers, duties and responsibilities of the commission shall include the following:

2 (1) Make a continuing investigation, study and review of the practices, policies and
3 procedures of the health care and social services agencies in this state;

4 (2) Make a continuing investigation, study and review of all matters related to health and
5 social policy in the state;

6 (3) Review program development by the various agencies of ~~the Department of Health~~

7 ~~and Human Resources~~ the Department of Healthcare Facilities the Department of Health and
8 Compliance and, the Department of Human Services if those programs impact the physical,
9 emotional or social well-being of the citizens of West Virginia;

10 (4) Conduct studies on:

11 (A) The amount of funds expended by hospitals and other health care providers of this
12 state for services to persons who are unable to pay for those services and for which they receive
13 no other form of reimbursement;

14 (B) The extent to which persons in this state forego needed medical services because of
15 insufficient income and assets to pay for those services;

16 (C) The extent to which the state is maximizing available federal programs and moneys in
17 providing health care services to the citizens of this state;

18 (D) The operation of the programs and funds created by §16-29C-1 *et seq.* of this code;
19 and

20 (E) The roles of the public, private and private nonprofit sectors in providing health care
21 services to the citizens of this state;

22 (5) Review and study the state Medicaid program in order to determine if the state
23 Medicaid agency, as the payor of last resort, is expending maximum effort to identify alternate
24 private insurance resources for Medicaid beneficiaries;

25 (6) Review and study the feasibility and financial impact upon the state of assuring
26 increased access to Medicaid beneficiaries to primary health care in the nonhospital setting by
27 requiring enrollment in a primary care clinic program, if available;

28 (7) Review and study the feasibility and financial impact upon the state of the
29 establishment of different and lesser schedules of payment for primary health services delivered
30 by a hospital emergency room as compared to the schedule of payments for emergency room
31 services of a true medical emergency nature; and

32 (8) Conduct a study on the effects of rural health networks, including effects on the quality,

33 cost and availability of care. and

34 ~~(9) Meet jointly with the advisory committee created in §16-35-1 et seq. of this code to~~
35 ~~determine methods for coordinating the collection and analysis of health care information within~~
36 ~~the state, including the development of health information systems that will allow for the electronic~~
37 ~~transmittal of data and access by the various agencies of government.~~

38 (b) The commission shall make annual reports to the Legislature regarding the results of
39 all investigations, studies and reviews pursuant to the provisions of §16-29E-7 of this code.

ARTICLE 37. BODY PIERCING STUDIO BUSINESS.

§16-37-1. Short title.

1 [Repealed]

§16-37-2. Definitions.

1 [Repealed]

**§16-37-3. Registration requirements; inspections by local boards of health; posting of
permit; power of local board of health to order studio to close.**

1 [Repealed]

§16-37-4. Rules to be proposed by the Department of Health and Human Resources.

1 [Repealed]

§16-37-5. Violations and penalties.

1 [Repealed]

ARTICLE 38. TATTOO STUDIO BUSINESS.

§16-38-1. Definitions.

1 [Repealed]

§16-38-2. Studio sanitation.

1 [Repealed]

§16-38-3. Operation standards.

1 [Repealed]

§16-38-4. Facilities and equipment.

1 [Repealed]

§16-38-5. Disposal of waste.

1 [Repealed]

§16-38-6. Registration requirements; inspections by local or regional boards of health; permit fees.

1 [Repealed]

§16-38-7. Violations and penalties.

1 [Repealed]

ARTICLE 44. THE PULSE OXIMETRY NEWBORN TESTING ACT.

§16-44-1. Legislative findings.

1 [Repealed]

§16-44-2. Pulse oximetry screening required; definition; rules.

1 [Repealed]

ARTICLE 45. TANNING FACILITIES.

§16-45-1. Definitions.

1 [Repealed]

§16-45-2. Exception for health care providers.

1 [Repealed]

§16-45-3. Operation standards.

1 [Repealed]

§16-45-4. Local health department authority to inspect.

1 [Repealed]

§16-45-5. Violations and penalties.

1 [Repealed]

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

1 (a) A preliminary breath analysis may be administered to a child whenever a law-
2 enforcement official has reasonable cause to believe the child to have been driving a motor
3 vehicle with any amount of alcohol in his or her blood for the purpose of determining the child's
4 blood alcohol content. Such breath analysis must be administered as soon as possible after the
5 law-enforcement officer arrives at a reasonable belief that the child has been driving a motor
6 vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis
7 administered pursuant to this subsection must be administered with a device and in a manner
8 approved by the ~~division of health~~ Department of Health and Compliance for that purpose. If a
9 preliminary breath analysis is administered, the results shall be used solely for the purpose of
10 guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an
11 alcohol concentration in his or her blood of two hundredths of one percent or more, by weight,
12 and should, therefore, be taken into custody to administer a secondary test in accordance with
13 the provisions of this section.

14 (b) A child may be taken into custody by a law-enforcement official without a warrant or
15 court order if the official has reasonable grounds to believe the child to have been driving a motor
16 vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is
17 administered and the results of the analysis indicate that the child has an alcohol concentration
18 in his or her blood of less than two hundredths of one percent, by weight, the child may not be
19 taken into custody unless other grounds exist under §49-5-8(b) of this code. Upon taking a child
20 into custody pursuant to the provisions of this section, the official shall take all reasonable steps

21 to cause notification to be made to the child's parent or custodian or, if the parent or custodian
22 cannot be located, to a close relative.

23 (c) Upon taking a child into custody pursuant to this section, the official shall take the child
24 to a facility where a secondary test of the child's blood or urine may be administered at the
25 direction of the official or a test of the child's breath may be administered by the official. The law-
26 enforcement agency by which such law-enforcement official is employed shall designate whether
27 the secondary test is a test of either blood, breath or urine: *Provided*, That if the test so designated
28 is a blood test and the child refuses to submit to the blood test, then the law-enforcement official
29 taking the child into custody shall designate in lieu thereof a breath test to be administered.
30 Notwithstanding the provisions of §17C-5-7 of this code, a refusal to submit to a blood test only
31 shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any
32 child taken into custody pursuant to this section shall be given a written statement advising him
33 or her that a refusal to submit to a secondary test of either blood, breath or urine, as finally
34 designated by the law-enforcement agency or official in accordance with this subsection, will
35 result in the suspension of his or her license to operate a motor vehicle in this state for a period
36 of at least thirty days or a revocation of the license for a period up to life.

37 (d) If the law-enforcement official taking the child into custody is employed by a law-
38 enforcement agency which does not have available the testing equipment or facilities necessary
39 to conduct any secondary breath test which may be administered pursuant to the provisions of
40 this section, then the official who took the child into custody may request another qualified person
41 to administer a secondary breath test: *Provided*, That the breath test shall be administered in the
42 presence of the official who took the child into custody. The results of such breath test may be
43 used in evidence to the same extent and in the same manner as if such test had been conducted
44 by the law-enforcement official who took the child into custody. The qualified person administering
45 the breath test must be a member of the West Virginia state police, the sheriff of the county
46 wherein the child was taken into custody or any deputy of such sheriff or a law-enforcement official

47 of another municipality within the county wherein the child was taken into custody. Only the person
48 actually administering the secondary breath test is competent to testify as to the results and the
49 veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance
50 with the provisions of §17C-5-6 of this code.

51 (e) After taking the child into custody, if the law-enforcement official has reasonable cause
52 to believe that the act of the child in driving the motor vehicle is such that it would provide grounds
53 for arrest for an offense defined under the provisions of §17C-5-2 of this code, if the child were
54 an adult, then the official shall proceed to treat the child in the same manner as any other child
55 taken into custody without a warrant or court order, in accordance with the provisions of §17C-5-
56 8 of this code.

57 (f) If the results of any secondary test administered pursuant to this section indicate that
58 the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood
59 of eight hundredths of one percent or less, by weight, and if the law-enforcement official does not
60 have reasonable cause to believe that the act of the child in driving the motor vehicle is such that
61 it would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this
62 code, if the child were an adult, then the official shall release the child: *Provided*, That if the results
63 of any secondary test administered pursuant to this section indicate that the child, at the time of
64 driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of
65 one percent or more, by weight, the child shall only be released to a parent or custodian, or to
66 some other responsible adult.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF
ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.**

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) ~~The Department of Health and Human Resources, Division of Alcoholism and Drug~~

2 ~~Abuse~~ The Department of Human Services, shall administer a comprehensive safety and
3 treatment program for persons whose licenses have been revoked under the provisions of this
4 article or §17C-5-7 of this code or §17B-3-5(6) of this code and shall also establish the minimum
5 qualifications for mental health facilities, day report centers, community correction centers or other
6 public agencies or private entities conducting the safety and treatment program: *Provided, That*
7 ~~the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse~~ the
8 Department of Human Services may establish standards whereby the ~~division~~ department will
9 accept or approve participation by violators in another treatment program which provides the
10 same or substantially similar benefits as the safety and treatment program established pursuant
11 to this section.

12 (b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and
13 drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs
14 as they relate to driving, defensive driving or other safety driving instruction and other programs
15 designed to properly educate, train and rehabilitate the offender.

16 (c) ~~The Department of Health and Human Resources, Division of Alcoholism and Drug~~
17 ~~Abuse~~ The Department of Human Services shall provide for the preparation of an educational
18 and treatment the program for each person whose license has been revoked under the provisions
19 of this article or §17C-5-7 of this code or §17B-3-5(6) of this code which shall contain the following:
20 (1) A listing and evaluation of the offender's prior traffic record; (2) the characteristics and history
21 of alcohol or drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety
22 program; and (4) a recommendation as to treatment or rehabilitation and the terms and conditions
23 of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in
24 the diagnosis of alcohol or drug abuse and treatment.

25 (d) There is hereby created a special revenue account within the State Treasury known
26 as the ~~Department of Health and Human Resources~~ Department of Human Services Safety and
27 Treatment Fund. The account shall be administered by the Secretary of ~~the Department of Health~~

28 ~~and Human Resources~~ the Department of Human Services for the purpose of administering the
29 comprehensive safety and treatment program established by subsection (a) of this section. The
30 account may be invested, and all earnings and interest accruing shall be retained in the account.
31 The Auditor shall conduct an audit of the fund at least every three fiscal years.

32 Effective July 1, 2010, the State Treasurer shall make a one-time transfer of \$250,000
33 from the Motor Vehicle Fees Fund into the ~~Department of Health and Human Resources~~
34 Department of Human Services Safety and Treatment Fund.

35 (e) (1) The program provider shall collect the established fee from each participant upon
36 enrollment unless the department has determined that the participant is an indigent based upon
37 criteria established pursuant to legislative rule authorized in this section.

38 (2) If the department determined that a participant is an indigent based upon criteria
39 established pursuant to the legislative rule authorized by this section, the department shall provide
40 the applicant with proof of its determination regarding indigency, which proof the applicant shall
41 present to the interlock provider as part of the application process provided in §17C-5A-3a of this
42 code and/or the rules promulgated pursuant thereto.

43 (3) Program providers shall remit to ~~the Department of Health and Human Resources~~ the
44 Department of Human Services a portion of the fee collected, which shall be deposited by the
45 Secretary of ~~the Department of Health and Human Resources~~ the Department of Human Services
46 into ~~the Department of Health and Human Resources~~ the Department of Human Services Safety
47 and Treatment Fund. ~~The Department of Health and Human Resources~~ The Department of
48 Human Services shall reimburse enrollment fees to program providers for each eligible indigent
49 offender.

50 (f) On or before January 15 of each year, the Secretary of ~~the Department of Health and~~
51 ~~Human Resources~~ the Department of Human Services shall report to the Legislature on:

52 (1) The total number of offenders participating in the safety and treatment program during
53 the prior year;

54 (2) The total number of indigent offenders participating in the safety and treatment
55 program during the prior year;

56 (3) The total number of program providers during the prior year; and

57 (4) The total amount of reimbursements paid to program provider during the prior year.

58 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to
59 the program developed for the offender, shall prescribe the necessary terms and conditions for
60 the reissuance of the license to operate a motor vehicle in this state revoked under this article or
61 §17C-5-7 of this code or §17B-3-5(6) of this code which shall include successful completion of
62 the educational, treatment or rehabilitation program, subject to the following:

63 (1) When the period of revocation is six months, the license to operate a motor vehicle in
64 this State may not be reissued until: (A) At least ninety days have elapsed from the date of the
65 initial revocation, during which time the revocation was actually in effect;(B) the offender has
66 successfully completed the program; (C) all costs of the program and administration have been
67 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

68 (2) When the period of revocation is for a period of one year or for more than a year, the
69 license to operate a motor vehicle in this state may not be reissued until: (A) At least one-half of
70 the time period has elapsed from the date of the initial revocation, during which time the revocation
71 was actually in effect; (B) the offender has successfully completed the program; (C) all costs of
72 the program and administration have been paid; and (D) all costs assessed as a result of a
73 revocation hearing have been paid. Notwithstanding any provision in this code, a person whose
74 license is revoked for refusing to take a chemical test as required by §17C-5-7 of this code for a
75 first offense is not eligible to reduce the revocation period by completing the safety and treatment
76 program.

77 (3) When the period of revocation is for life, the license to operate a motor vehicle in this
78 State may not be reissued until: (A) At least ten years have elapsed from the date of the initial
79 revocation, during which time the revocation was actually in effect; (B) the offender has

80 successfully completed the program; (C) all costs of the program and administration have been
81 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

82 (4) Notwithstanding any provision of this code or any rule, any mental health facilities or
83 other public agencies or private entities conducting the safety and treatment program when
84 certifying that a person has successfully completed a safety and treatment program shall only
85 have to certify that the person has successfully completed the program.

86 (h) (1) ~~The Department of Health and Human Resources, Division of Alcoholism and Drug~~
87 ~~Abuse~~ The Department of Human Services shall provide for the preparation of an educational
88 program for each person whose license has been suspended for sixty days pursuant to the
89 provisions of §17C-5A-2(n) of this code. The educational program shall consist of not less than
90 twelve nor more than eighteen hours of actual classroom time.

91 (2) When a sixty-day period of suspension has been ordered, the license to operate a
92 motor vehicle may not be reinstated until: (A) At least sixty days have elapsed from the date of
93 the initial suspension, during which time the suspension was actually in effect; (B) the offender
94 has successfully completed the educational program; (C) all costs of the program and
95 administration have been paid; and (D) all costs assessed as a result of a suspension hearing
96 have been paid.

97 (i) A required component of the treatment program provided in subsection (b) of this
98 section and the education program provided for in subsection (c) of this section shall be
99 participation by the violator with a victim impact panel program providing a forum for victims of
100 alcohol and drug-related offenses and offenders to share first-hand experiences on the impact of
101 alcohol and drug-related offenses in their lives. ~~The Department of Health and Human Resources,~~
102 ~~Division of Alcoholism and Drug Abuse~~ The Department of Human Services shall propose and
103 implement a plan for victim impact panels where appropriate numbers of victims are available and
104 willing to participate and shall establish guidelines for other innovative programs which may be
105 substituted where the victims are not available to assist persons whose licenses have been

106 suspended or revoked for alcohol and drug-related offenses to gain a full understanding of the
107 severity of their offenses in terms of the impact of the offenses on victims and offenders. The plan
108 shall require, at a minimum, discussion and consideration of the following:

- 109 (A) Economic losses suffered by victims or offenders;
- 110 (B) Death or physical injuries suffered by victims or offenders;
- 111 (C) Psychological injuries suffered by victims or offenders;
- 112 (D) Changes in the personal welfare or familial relationships of victims or offenders; and
- 113 (E) Other information relating to the impact of alcohol and drug-related offenses upon
114 victims or offenders.

115 ~~The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse~~
116 The Department of Human Services shall ensure that any meetings between victims and
117 offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

118 (j)(1) The Secretary of ~~the Department of Health and Human Resources~~ the Department
119 of Human Services shall promulgate a rule for legislative approval in accordance with §29A-3-1
120 *et seq.* of this code to administer the provisions of this section and establish a fee to be collected
121 from each offender enrolled in the safety and treatment program. The rule shall include: (A) A
122 reimbursement mechanism to program providers of required fees for the safety and treatment
123 program for indigent offenders, criteria for determining eligibility of indigent offenders, and any
124 necessary application forms; and (B) program standards that encompass provider criteria
125 including minimum professional training requirements for providers, curriculum approval,
126 minimum course length requirements and other items that may be necessary to properly
127 implement the provisions of this section.

128 (2) The Legislature finds that an emergency exists and, therefore, the secretary shall file
129 by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of §29A-
130 3-15 of this code.

131 (k) Nothing in this section may be construed to prohibit day report or community correction

132 programs, authorized pursuant to §62-11C-1 *et seq.* of this code, from administering a
133 comprehensive safety and treatment program pursuant to this section.

CHAPTER 18. EDUCATION.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 (a) Each county superintendent shall hold a professional administrative certificate
2 endorsed for superintendent, or a first class permit endorsed for superintendent, subject to the
3 following:

4 (1) A superintendent who holds a first class permit may be appointed for one year only,
5 and may be reappointed two times for an additional year each upon an annual evaluation by the
6 county board and a determination of satisfactory performance and reasonable progress toward
7 completion of the requirements for a professional administrative certificate endorsed for
8 superintendent;

9 (2) Any candidate for superintendent, assistant superintendent or associate
10 superintendent, who possesses an earned doctorate from an accredited institution of higher
11 education and either has completed three successful years of teaching in public education or has
12 the equivalent of three years of experience in management or supervision as defined by state
13 board rule, after employment by the county board shall be granted a permanent administrative
14 certificate and shall be a licensed county superintendent;

15 (3) The state board shall promulgate a legislative rule in accordance with §29A-3B-1 *et*
16 *seq.* of this code, to address those cases where a county board finds that course work needed by
17 the county superintendent who holds a first class permit is not available or is not scheduled at
18 state institutions of higher education in a manner which will enable the county superintendent to
19 complete normal requirements for a professional administrative certificate within the three-year
20 period allowed under the permit; and

21 (4) Any person employed as assistant superintendent or educational administrator prior to
22 June 27, 1988, and who was previously employed as superintendent is not required to hold the
23 professional administrative certificate endorsed for superintendent.

24 (b) In addition to other requirements set forth in this section, a county superintendent shall
25 meet the following health-related conditions of employment:

26 (1) Before entering upon the discharge of his or her duties, file with the president of the
27 county board a certificate from a licensed physician certifying the following:

28 (A) A tuberculin skin test, of the type Mantoux test (PPD skin test), approved by the
29 ~~Director of the Division of Health~~ Secretary of the Department of Health and Compliance, has
30 been made within four months prior to the beginning of the term of the county superintendent;
31 and

32 (B) The county superintendent does not have tuberculosis in a communicable state based
33 upon the test results and any further study;

34 (2) After completion of the initial test, the county superintendent shall have an approved
35 tuberculin skin test once every two years or more frequently if medically indicated. Positive
36 reactors to the skin test are to be referred immediately to a physician for evaluation and indicated
37 treatment or further studies;

38 (3) A county superintendent who is certified by a licensed physician to have tuberculosis
39 in a communicable stage shall have his or her employment discontinued or suspended until the
40 disease has been arrested and is no longer communicable; and

41 (4) A county superintendent who fails to complete required follow-up examinations as set
42 forth in this subsection shall be suspended from employment until a report of examination is
43 confirmed.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors;

administration of injections; notice; indemnity from liability; rules.

1 (a) A public, private, parochial or denominational school located within this state may
2 possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency
3 medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school
4 personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school to
5 stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by the school in
6 a secure location which is only accessible by medical personnel and authorized nonmedical
7 personnel and not by students.

8 (b) An allopathic physician licensed to practice pursuant to the provisions of §30-3-1 *et*
9 *seq.* of this code or an osteopathic physician licensed to practice pursuant to the provisions of
10 §30-14-1 *et seq.* of this code may prescribe within the course of his or her professional practice
11 standing orders and protocols for use when necessary by a school which wishes to maintain
12 epinephrine auto-injector pursuant to the provisions of this section.

13 (c) A school nurse, as set forth in §18-5-22 of this code, may administer an epinephrine
14 auto-injector to a student or school personnel during regular school hours or at a school function
15 when the school nurse medically believes the individual is experiencing an anaphylactic reaction.
16 A school nurse may use the school supply of epinephrine auto-injectors for a student or school
17 personnel authorized to self-administer that meet the requirements of a prescription on file with
18 the school.

19 (d) Nonmedical school personnel who have been trained in the administration of an
20 epinephrine auto-injector and who have been designated and authorized by the school or county
21 board to administer the epinephrine auto-injector are authorized to administer an epinephrine
22 auto-injector to a student or school personnel during regular school hours or at a school function
23 when the authorized and designated nonmedical school personnel reasonably believes, based
24 upon their training, that the individual is experiencing an anaphylactic reaction. Nonmedical school
25 personnel may use the school supply of epinephrine auto-injectors for a student or school

26 personnel authorized to self-administer that meet the requirements of a prescription on file with
27 the school.

28 (e) School transportation employees, including bus drivers, who have been trained in the
29 administration of an epinephrine auto-injector and who have been designated and authorized by
30 the school or county board to administer an epinephrine auto-injector may administer an
31 epinephrine auto-injector to a student or school personnel during transportation to or from a
32 school function when the school transportation employee reasonably believes, based upon his or
33 her training, that the individual is experiencing an anaphylactic reaction. A school transportation
34 employee may use the individual's personal supply of epinephrine auto-injectors or the school's
35 supply of epinephrine auto-injectors for a student or school personnel authorized to self-
36 administer that meet the requirements of a prescription on file with the school: *Provided*, That a
37 school transportation employee shall defer to an individual possessing a higher degree of medical
38 training or the parent of the child experiencing an anaphylactic reaction, if either are present at
39 the time of the reaction; *Provided, however*, That the school transportation employee, trained and
40 authorized to administer epinephrine auto-injectors, is not subject to the terms of §18-5-22 of this
41 code.

42 (f) Prior notice to the parents of a student of the administration of the epinephrine auto-
43 injector is not required. Immediately following the administration of the epinephrine auto-injector,
44 the school shall provide notice to the parent of a student who received an auto-injection.

45 (g) A school nurse, a trained school transportation employee, or trained and authorized
46 nonmedical school personnel who administer an epinephrine auto-injection to a student or to
47 school personnel as provided in this section is immune from liability for any civil action arising out
48 of an act or omission resulting from the administration of the epinephrine auto-injection unless the
49 act or omission was the result of the school nurse, school transportation employee, or trained and
50 authorized nonmedical school personnel's gross negligence or willful misconduct.

51 (h) For the purposes of this section, all county boards of education may participate in free

52 or discounted drug programs from pharmaceutical manufacturers to provide epinephrine auto-
53 injectors to schools in their counties which choose to stock auto-injectors.

54 (i) All county boards of education are required to collect and compile aggregate data on
55 incidents of anaphylactic reactions resulting in the administration of school maintained
56 epinephrine auto-injectors in their county during a school year and forward the data to the state
57 superintendent of schools. The state superintendent of schools shall prepare an annual report to
58 be presented to the Joint Committee on Government and Finance as set forth in §4-3-1 *et seq.* of
59 this code, by December 31 of each year.

60 (j) The State Board of Education, as defined in §18-2-1 *et seq.* of this code, shall consult
61 with the ~~state health officer~~ Commissioner of the Bureau for Public Health, as defined in ~~section~~
62 ~~four, article three, chapter thirty~~ §16-1-1 *et seq.* of this code, and promulgate rules necessary to
63 effectuate the provisions of this section in accordance with the provisions of §29A-3B-1 *et seq.* of
64 this code. The rules shall provide, at a minimum, for:

65 (1) The criteria for selection and minimum requirements of nonmedical school personnel
66 and school transportation employees who may administer epinephrine auto-injectors following the
67 necessary training;

68 (2) The training requirements necessary for nonmedical school personnel and school
69 transportation employees to be authorized to administer an epinephrine auto-injection;

70 (3) Training on anaphylaxis and allergy awareness for food service workers in the school
71 system, if easily available locally;

72 (4) Storage requirements for maintaining the epinephrine auto-injectors within the schools;

73 (5) Comprehensive notice requirements to the parents of a student who was administered
74 a school maintained epinephrine auto-injection including who administered the injection, the
75 rationale for administering the injection, the approximate time of the injection and any other
76 necessary elements to make the student's parents fully aware of the circumstances surrounding
77 the administration of the injection;

78 (6) Any and all necessary documentation to be kept and maintained regarding receipt,
79 inventory, storage and usage of all epinephrine auto-injectors;

80 (7) Detailed reporting requirements for county boards of education on incidents of use of
81 school maintained epinephrine auto-injectors during a school year; and

82 (8) Any other requirements necessary to fully implement this section.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) "Accumulated contributions" means all deposits and all deductions from the gross
3 salary of a contributor plus regular interest.

4 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on
5 behalf of a retired member.

6 (3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value
7 computed upon the basis of the mortality table and interest rates as set and adopted by the
8 retirement board in accordance with the provisions of this article: *Provided*, That when used in
9 the context of compliance with the federal maximum benefit requirements of Section 415 of the
10 Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and
11 interest rates required to comply with those requirements.

12 (4) "Annuities" means the annual retirement payments for life granted beneficiaries in
13 accordance with this article.

14 (5) "Average final salary" means the average of the five highest fiscal year salaries earned
15 as a member within the last fifteen fiscal years of total service credit, including military service as
16 provided in this article, or if total service is less than fifteen years, the average annual salary for
17 the period on which contributions were made: *Provided*, That salaries for determining benefits
18 during any determination period may not exceed the maximum compensation allowed as adjusted

19 for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal
20 Revenue Code.

21 (6) "Beneficiary" means the recipient of annuity payments made under the retirement
22 system.

23 (7) "Contributor" means a member of the retirement system who has an account in the
24 teachers accumulation fund.

25 (8) "Deposit" means a voluntary payment to his or her account by a member.

26 (9) "Employer" means the agency of and within the state which has employed or employs
27 a member.

28 (10) "Employer error" means an omission, misrepresentation or violation of relevant
29 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the
30 relevant provisions of both the West Virginia Code and of the West Virginia Code of State
31 Regulations by the participating public employer that has resulted in an underpayment or
32 overpayment of contributions required. A deliberate act contrary to the provisions of this section
33 by a participating public employer does not constitute employer error.

34 (11) "Employment term" means employment for at least ten months, a month being
35 defined as twenty employment days.

36 (12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating
37 public employer to a member for performing duties for the participating public employer for which
38 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the
39 work was done. Gross salary also includes retroactive payments made to a member to correct a
40 clerical error, or made pursuant to a court order or final order of an administrative agency charged
41 with enforcing federal or state law pertaining to the member's rights to employment or wages, with
42 all retroactive salary payments to be allocated to and considered paid in the periods in which the
43 work was or would have been done. Gross salary does not include lump sum payments for
44 bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind

45 including, but not limited to, transportation allowances, automobiles or automobile allowances, or
46 lump sum payments for unused, accrued leave of any type or character.

47 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
48 amended.

49 (14) "Member" means any person who has accumulated contributions standing to his or
50 her credit in the state Teachers Retirement System. A member shall remain a member until the
51 benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of
52 membership pursuant to §18-7A-13 of this code.

53 (15) "Members of the administrative staff of the public schools" means deans of instruction,
54 deans of men, deans of women, and financial and administrative secretaries.

55 (16) "Members of the extension staff of the public schools" means every agricultural agent,
56 boys' and girls' club agent and every member of the agricultural extension staff whose work is not
57 primarily stenographic, clerical or secretarial.

58 (17) "New entrant" means a teacher who is not a present teacher.

59 (18) "Nonteaching member" means any person, except a teacher member, who is
60 regularly employed for full-time service by: (A) Any county board of education; (B) the State Board
61 of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for
62 Community and Technical College Education; or (E) a governing board, as defined in §18B-1-2
63 of this code: *Provided*, That any person whose employment with the Higher Education Policy
64 Commission, the West Virginia Council for Community and Technical College Education or a
65 governing board commences on or after July 1, 1991, is not considered a nonteaching member.

66 (19) "Plan year" means the twelve-month period commencing on July 1 and ending the
67 following June 30 of any designated year.

68 (20) "Present member" means a present teacher or nonteacher who is a member of the
69 retirement system.

70 (21) "Present teacher" means any person who was a teacher within the thirty-five years

71 beginning July 1, 1934, and whose membership in the retirement system is currently active.

72 (22) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all
73 service of a present member who was employed as a teacher, and did not contribute to a
74 retirement account because he or she was legally ineligible for membership during the service.

75 (23) "Public schools" means all publicly supported schools, including colleges and
76 universities in this state.

77 (24) "Refund beneficiary" means the estate of a deceased contributor or a person he or
78 she has nominated as beneficiary of his or her contributions by written designation duly executed
79 and filed with the retirement board.

80 (25) "Regular interest" means interest at four percent compounded annually, or a higher
81 earnable rate if set forth in the formula established in legislative rules, series seven of the
82 Consolidated Public Retirement Board, 162 CSR 7.

83 (26) "Regularly employed for full-time service" means employment in a regular position or
84 job throughout the employment term regardless of the number of hours worked or the method of
85 pay.

86 (27) "Required beginning date" means April 1 of the calendar year following the later of:
87 (A) The calendar year in which the member attains age seventy and one-half years; or (B) the
88 calendar year in which the member retires or ceases covered employment under the system after
89 having attained the age of seventy and one-half years.

90 (28) "Retirant" means any member who commences an annuity payable by the retirement
91 system.

92 (29) "Retirement board" means the Consolidated Public Retirement Board created
93 pursuant to §5-10D-1 *et seq.* of this code.

94 (30) "Retirement system" means the state Teachers Retirement System established by
95 this article.

96 (31) "Teacher member" means the following persons, if regularly employed for full-time

97 service: (A) Any person employed for instructional service in the public schools of West Virginia;
98 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county
99 superintendents of schools; (E) any county school attendance director holding a West Virginia
100 teacher's certificate; (F) members of the research, extension, administrative or library staffs of the
101 public schools;(G) the State Superintendent of Schools, heads and assistant heads of the
102 divisions under his or her supervision, or any other employee under the state superintendent
103 performing services of an educational nature;(H) employees of the State Board of Education who
104 are performing services of an educational nature;(I) any person employed in a nonteaching
105 capacity by the State Board of Education, any county board of education, the State Department
106 of Education or the State Teachers Retirement Board, if that person was formerly employed as a
107 teacher in the public schools;(J) all classroom teachers, principals and educational administrators
108 in schools under the supervision of the Division of Corrections, the ~~Division~~ Department of Health
109 and Compliance or the ~~Division of Human Services~~ Department of Human Services; (K) an
110 employee of the State Board of School Finance, if that person was formerly employed as a teacher
111 in the public schools; and(L) any person designated as a 21st Century Learner Fellow pursuant
112 to §18A-3-11 of this code who elects to remain a member of the State Teachers Retirement
113 System provided in this article.

114 (32) "Total service" means all service as a teacher or nonteacher while a member of the
115 retirement system since last becoming a member and, in addition thereto, credit for prior service,
116 if any.

117 Age in excess of seventy years shall be considered to be seventy years.

ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-3. Air quality in new schools.

1 (a) In an effort to create well-ventilated school environments and notwithstanding any
2 other provision of this code to the contrary, any new school building designed and constructed in

3 the state by a county board, regardless of the funding source, shall be designed and constructed
4 in compliance with the current standards of the American society of heating, refrigerating and air
5 conditioning engineers handbook (ASHRAE), the national fire protection association code (NFPA)
6 and the code of the building officials and code administrators (BOCA).

7 (b) Upon notice from the School Building Authority that a new public school building is
8 occupied, the ~~division of health~~ Department of Health and Compliance shall perform radon testing
9 in the school within the first year after occupancy and at least every five years thereafter. The
10 county board shall provide any reasonable assistance to the ~~division of health~~ Department of
11 Health and Compliance that is necessary to perform the radon testing. The radon testing shall
12 include all major student-occupied areas at or below grade level. If it is determined that radon is
13 present in amounts greater than the amount determined to be acceptable by the rules
14 promulgated by the School Building Authority, pursuant to subsection (d) of this section, any
15 industry accepted mitigation technique shall be used to reduce the radon level to the level or
16 below the level determined acceptable by the School Building Authority.

17 (c) If the School Building Authority determines that it is feasible to test for radon prior to
18 the construction of a school building, the School Building Authority may cause preconstruction
19 site testing for radon to be performed.

20 (d) The School Building Authority shall promulgate rules pursuant to §29A-3A-1 *et seq.* of
21 this code to ensure that any new school building designed after the effective date of this article is
22 designed and constructed in accordance with the current ASHRAE, NFPA and BOCA standards.
23 The School Building Authority shall promulgate rules, pursuant to §29A-3A-1 *et seq.* of this code,
24 that establish standards for safe levels of radon for public school buildings. The rules shall include
25 the requirement that county boards submit all new school designs to the School Building Authority
26 for review and approval for compliance with current education standards and design efficiencies
27 prior to preparation of final bid documents.

28 (e) On or before July 1, 2002, the School Building Authority shall promulgate rules to

29 establish a process for independent testing, adjusting and balancing (TAB) heating, ventilation
30 and air conditioning (HVAC) systems in new school buildings or renovated schools when the
31 HVAC system has been replaced prior to occupancy. The process shall be consistent with current
32 ASHRAE standards and shall include, but not be limited to, the following:

33 (1) Requiring HVAC designers to be professional engineers registered in this state in the
34 specific discipline associated with the system being designed;

35 (2) Requiring a process to ensure that the HVAC system has been installed in the
36 prescribed manner and will operate within the performance guidelines as designed;

37 (3) Requiring participation of the design engineer who designed the system to verify the
38 intent of the design;

39 (4) Requiring the TAB agent to be qualified to perform the desired services and perform
40 testing and balancing procedures, or qualified to perform other School Building Authority-
41 approved certification according to the procedures contained in the associated air balance council
42 (AABC) national standards, the national environmental balancing bureau (NEBB) procedural
43 standards and the environment engineering consultants (EEC) standards for testing, adjusting
44 and balancing of environmental systems;

45 (5) Requiring that the independent TAB agent directly represent the building owner and is
46 under contract with the building owner and paid from project funds;

47 (6) Requiring that sufficient documentation is provided to the owner to facilitate control
48 and maintenance of the systems in accordance with the manufacturer's requirements;

49 (7) Requiring that sufficient training is provided by the equipment manufacturer or an agent
50 of the manufacturer to those persons who will operate and maintain the systems prior to
51 occupation of the facility, including at least one full day follow-up training between six and eight
52 months after the facility has been occupied; and

53 (8) Requiring certification upon successful completion of the TAB process by the
54 independent TAB agent.

55 (f) To ensure proper maintenance and operation of new and replacement HVAC
56 equipment, the Department of Education, using existing staff, shall provide county maintenance
57 personnel additional training on the equipment and its controls at the site of the installation. The
58 training shall occur within one year after student occupation of any new school facility or at any
59 existing school facility where the HVAC system has been replaced or generally rehabilitated.
60 Additionally, the Department of Education's facility staff shall provide on-site training to the county
61 maintenance staff on the county's HVAC equipment at any facility that has been determined to
62 have problematic indoor air quality as identified through the complaint procedure set forth in state
63 board policy 6202.

64 (g) Upon completion of the required training, the Department of Education's facility staff
65 shall provide the county board a report summarizing the training that was completed and a plan
66 for continuing education of the county's HVAC staff. If sufficient staff is not available to the county
67 to perform maintenance on HVAC systems, the Department of Education's staff shall assist the
68 county in the development of an immediate and long range maintenance plan to ensure that
69 HVAC systems are maintained and operated according to the manufacturer's recommendations.

70 (h) Beginning July 1, 2002, and every three months thereafter, the Department of
71 Education shall forward to the School Building Authority copies of any complaints received by the
72 Department of Education of indoor air quality problems which require system repair or
73 replacement and are identified through the complaint procedure established in state board policy
74 6202.

75 (i) The state board shall promulgate rules, pursuant to §29A-3B-1 *et seq.* of this code, in
76 consultation with the division of health, that authorize the use of any appropriate floor covering in
77 public school buildings, based on user needs and performance specifications.

**§18-9E-5. Investigation of indoor air quality complaints in existing schools and schools
subsequently constructed.**

1 (a) The state board, in consultation with the ~~division of health~~ Department of Health and

2 Compliance, shall promulgate rules pursuant to §29A-3B-1 *et seq.* of this code which require each
3 county board to investigate all reports of indoor air quality problems within the county. The rules
4 shall set forth a designated official or officials within the county school system to be responsible
5 for addressing, pursuant to this section, any indoor air quality complaints. The rules also shall set
6 forth a procedure for any party to file a complaint with the designated official or officials. Any
7 indoor air quality complaint found to be valid by the designated official or officials shall be
8 addressed by forming a plan of correction. Any county board that addresses an indoor air quality
9 complaint is encouraged to seek any available assistance from local, state and federal agencies
10 in both investigating the complaint and in forming the plan of correction. A county board shall
11 consider any documented plans of closure of a school building when forming any plan of
12 correction for that school building. The rules shall be submitted to the Legislative Oversight
13 Commission on Education Accountability prior to September 1, 1999. Additionally, the rules shall
14 set an appropriate cost for a plan of correction over which all such plans of correction shall be
15 reported to the Legislative Oversight Commission on Education Accountability. Based upon the
16 Legislative Oversight Commission on Education Accountability's experience in receiving the
17 complaints, the commission shall submit a recommendation for funding the plans of correction.

18 (b) Furthermore, each plan of correction shall be incorporated into each county board's
19 ten-year county-wide major improvement plan set forth in §18-9D-16 of this code. Also pursuant
20 to §18-9D-16 of this code, the state board may restrict the use of the necessary funds or otherwise
21 allocate funds from moneys appropriated by the Legislature for those purposes set forth in §18-
22 9A-9 of this code: *Provided*, That nothing in this subsection shall be interpreted as requiring that
23 a county board make addressing an air quality complaint a priority over other projects in the county
24 board's ten-year county-wide major improvement plan.

**ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY
REHABILITATION FUND ACT.**

§18-10K-2. Board created, membership, terms, officers and staff.

1 (a) There is hereby established the West Virginia traumatic brain and spinal cord injury
2 rehabilitation fund board.

3 (b) The board shall consist of twenty-three members. The members shall include:

4 (1) The Secretary of the Department of Education and the arts, ex officio, or his or her
5 designee;

6 (2) The Secretary of ~~health and Human resources~~ Services, ex officio, or his or her
7 designee;

8 (3) The State Superintendent of Schools, ex officio, or his or her designee;

9 (4) The secretary of the Department of Military Affairs and Public Safety, ex officio, or his
10 or her designee;

11 (5) The ~~director~~ Commissioner of the Bureau of Behavioral Health, ~~within the Department~~
12 ~~of Health and Human Resources~~ ex officio, or his or her designee;

13 (6) The director of the Division of Rehabilitation Services, ex officio, or his or her designee;

14 (7) The ~~director~~ Commissioner of the Bureau of Medical Services, ex officio, or his or her
15 designee;

16 (8) The director of the Office of Emergency Services, ex officio, or his or her designee;

17 (9) The executive director of the workers' compensation commission, ex officio, or his or
18 her designee;

19 (10) Seven members appointed by the Governor to represent public and private health
20 organizations or other disability coalitions or advisory groups; and

21 (11) Seven members appointed by the Governor who are either survivors of traumatic
22 brain or spinal cord injury or family members of persons with traumatic brain or spinal cord injury.

23 (c) The citizen members shall be appointed by the Governor for terms of three years,
24 except that of the members first appointed, two of the representatives of public and nonprofit
25 private health organizations, disability coalitions or advisory groups and two of the representatives

26 of survivors or family members of persons with traumatic brain or spinal cord injuries shall serve
27 for terms of one year, two of the representatives of each of those respective groups shall serve
28 for terms of two years and the remaining three representatives of each of those respective groups
29 shall serve for terms of three years. All subsequent appointments shall be for three years.
30 Members shall serve until the expiration of the term for which they have been appointed or until
31 their successors have been appointed and qualified. In the event of a vacancy, the Governor shall
32 appoint a qualified person to serve for the unexpired term. No member may serve more than two
33 consecutive three-year terms. State officers or employees may be appointed to the board unless
34 otherwise prohibited by law.

35 (d) In the event a board member fails to attend more than twenty-five percent of the
36 scheduled meetings in a twelve-month period, the board may, after written notification to that
37 member and the secretary of education and the arts, request in writing that the Governor remove
38 the member and appoint a new member to serve his or her unexpired term.

39 (e) The board shall elect from its membership a chairperson, treasurer and secretary as
40 well as any other officer as appropriate. The term of the chairperson is for two years in duration
41 and he or she cannot serve more than two consecutive terms.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-1. Health Education Loan Program; establishment; administration; eligibility and loan cancellation; required report.

1 (a) For the purposes of this section, "Vice Chancellor for Administration" means the person
2 employed pursuant to §18B-4-2 of this code.

3 (b) There is continued a special revolving fund account administered by the commission
4 in the state Treasury to be known as the Health Education Student Loan Fund which shall be
5 used to carry out the purposes of this section. The fund consists of the following:

6 (1) All funds on deposit in the medical student loan fund in the state Treasury or which are
7 due or become due for deposit in the fund as obligations made under the previous enactment of
8 this section;

9 (2) Those funds provided for medical education pursuant to the provisions of §18B-10-4
10 of this code;

11 (3) Appropriations provided by the Legislature;

12 (4) Repayment of any loans made under this section;

13 (5) Amounts provided by medical associations, hospitals or other medical provider
14 organizations in this state, or by political subdivisions of the state, under an agreement which
15 requires the recipient to practice his or her health profession in this state or in the political
16 subdivision providing the funds for a predetermined period of time and in such capacity as set
17 forth in the agreement; and

18 (6) Other amounts which may be available from external sources.

19 (c) Balances remaining in the fund at the end of the fiscal year do not expire or revert. All
20 costs associated with administering this section shall be paid from the Health Education Student
21 Loan Fund.

22 (d) The Vice Chancellor for Administration may utilize any funds in the Health Education
23 Student Loan Fund for the purposes of the Medical Student Loan Program. The commission shall
24 give priority for the loans to residents of this state, as defined by the commission. An individual is
25 eligible for loan consideration if the individual meets the following conditions:

26 (1) Demonstrates financial need;

27 (2) Meets established academic standards;

28 (3) Is enrolled or accepted for enrollment at the West Virginia University School of
29 Medicine, the Marshall University School of Medicine, or the West Virginia School of Osteopathic
30 Medicine in a program leading to the degree of medical doctor (M.D.) or doctor of osteopathy
31 (D.O.);

32 (4) Has not yet received one of the degrees provided in subdivision (3) of this subsection;
33 and

34 (5) Is not in default of any previous student loan.

35 (e) At the end of each fiscal year, any individual who has received a medical student loan
36 and who has rendered services as a medical doctor or a doctor of osteopathy in this state in a
37 medically underserved area or in a medical specialty in which there is a shortage of physicians,
38 as determined by the ~~Division of Health~~ Department of Health and Compliance at the time the
39 loan was granted, may submit to the commission a notarized, sworn statement of service on a
40 form provided for that purpose. Upon receipt of the statement the commission shall cancel
41 \$10,000 of the outstanding loan or loans for every full twelve consecutive calendar months of
42 such service.

43 (f) No later than thirty days following the end of each fiscal year, the Vice Chancellor for
44 Administration shall prepare and submit a report to the commission for inclusion in the statewide
45 report card required under §18B-1D-8 of this code to be submitted to the Legislative Oversight
46 Commission on Education Accountability established under §29A-3A-11 of this code. At a
47 minimum, the report shall include the following information:

48 (1) The number of loans awarded;

49 (2) The total amount of the loans awarded;

50 (3) The amount of any unexpended moneys in the fund; and

51 (4) The rate of default during the previous fiscal year on the repayment of previously
52 awarded loans.

CHAPTER 19. AGRICULTURE.

ARTICLE 11D. TRADITIONAL CHEESE PRODUCTION.

§19-11D-1. Legislative findings.

1 The Legislature finds that local production and sale of locally manufactured cheese

2 products is a culturally significant tradition and that the preservation of historic methods of cheese
3 production is in the public interest; that local cheese production is an important part of the
4 economic livelihood of many families and small businesses in this state; and that the unique
5 quality of home and farm-based cheese products cannot be duplicated using manufacturing and
6 food production requirements enforced by local boards of health. Therefore, the Legislature finds
7 that it is in the public interest to exempt certain local cheese production and local cheese products
8 from regulations of the ~~division of health~~ Department of Health and Compliance related to food
9 sanitation enforced by local boards of health, and to place the production of certain home and
10 farm-based cheese products under the jurisdiction of the Department of Agriculture.

§19-11D-3. Exemption from regulatory control; authorizing rules by the commissioner of agriculture.

1 The manufacture of cheese products described in §19-11D-2 of this code is exempt from:
2 (a) Pasteurization, packaging, labeling and all other health related requirements established in
3 this code or rules promulgated by the ~~division of health~~ Department of Health and Compliance;
4 and (b) regulatory control by the ~~division of health~~ Department of Health and Compliance and
5 county or local health departments or sanitarians. Powers of the commissioner of agriculture set
6 forth in §19-11A-10 of this code are applicable to the manufacturing of home and farm-based
7 cheese products described in §19-11D-2 of this code. The commissioner of agriculture is
8 authorized to promulgate rules pursuant to §29A-3-1 *et seq.* of this code, considering and
9 promoting traditional methods of cheese production, while providing minimum health and
10 sanitation standards necessary for the protection of the public, including standards for cleanliness,
11 handling, and protection from contamination. Emergency rules for this purpose are authorized.

ARTICLE 12A. LAND DIVISION.

§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

1 (a) The commission shall appoint a farm management director who, in addition to

2 qualifications established by the commission, shall have owned, operated or managed a farm for
3 at least five years within ten years immediately prior to being appointed. The farm management
4 director is the chief executive officer of the commission and is responsible for conducting the
5 operations of the farms. The director shall prepare an annual report of the farming operations,
6 including a listing of all receipts and expenditures and shall present it to the commission and the
7 Legislature at the end of each fiscal year.

8 (b) As authorized or directed by the commission, the director shall also:

9 (1) Prepare the annual budget request for the operation of the institutional farms and
10 submit it to the commission for approval and submission to the secretary of the Department of
11 Administration.

12 (2) Receive and approve all requisitions for farm supplies and equipment.

13 (3) Supervise the operation of all canneries and determine what foods are to be canned.

14 (4) Recruit and approve assistant farm managers to supervise each institutional farm.

15 (5) Implement all orders of the commission.

16 (6) Supervise all other employees of the commission.

17 (7) Transfer farm supplies, farm equipment, farm facilities, food stuffs and produce from
18 one institutional farm to another to promote efficiency and improve farm management.

19 (c) With the approval of the commission, the farm management director may rent or lease
20 additional land for farm use.

21 (d) By September 30, each year, each institution under the control of the ~~division of health~~
22 Department of Health and Compliance, the Department of Healthcare Facilities; the Department
23 of Human Services and the Division of Corrections shall present to the farm management director
24 a purchase order for its food requirements during the next fiscal year as determined by the
25 institution. If, during the year, an institution finds that it needs other or additional food, milk, or
26 commodities not included in its purchase order for the year, the institutional superintendent may
27 forward a supplemental request to the farm management director, which order may be filled

28 depending on availability. If institutional farms produce more food, milk and other commodities
29 than can be sold to the institutions, the farm management director may sell the surplus to other
30 state agencies willing to purchase. If any surplus remains after sales to other state agencies, the
31 director may sell the surplus on the open market, or at the discretion of the director, turn over any
32 surplus food products to appropriate public, nonprofit agencies upon application.

33 (e) On July 1, 1990, the ~~division of health~~ Department of Health and Compliance, the
34 Department of Healthcare Facilities; the Department of Human Services and the Division of
35 Corrections shall each transfer, by interdepartmental transfer, the sum of \$200,000 to the farm
36 management commission to be credited toward their purchase of food products from the
37 commission. Such credits shall be treated as advance payments for food products purchased by
38 these divisions pursuant to this section and such divisions shall not be required to make actual
39 payments for food products until such credits have been completely expended.

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.

§19-16A-4. Powers and duties of the commissioner.

1 The commissioner of agriculture has the power and duty to carry out the provisions of this
2 article and is authorized to:

3 (a) Delegate to employees of the Department of Agriculture the authority vested in the
4 commissioner by virtue of the provisions of this article;

5 (b) Cooperate, receive grants in aid and enter into agreements with any other agency of
6 the state, the United States Department of Agriculture, United States environmental protection
7 agency or any other federal agency or any other state or agency thereof for the purpose of
8 carrying out the provisions of this article;

9 (c) Contract for research projects;

10 (d) Require that pesticides used in this state are adequately tested and are safe for use
11 under local conditions;

12 (e) Require that individuals who sell, store, dispose or apply pesticides are adequately
13 trained and observe appropriate safety practices;

14 (f) Promulgate rules pursuant to chapter 29A of this code, including, but not limited to, the
15 following:

16 (1) Licensing of businesses that sell, store, recommend for use, mix or apply pesticides;

17 (2) Registration of pesticides for manufacture, distribution, sale, storage or use in this
18 state;

19 (3) Requiring reporting and recordkeeping related to licensing and registration;

20 (4) Establishing training, testing and standards for certification of commercial application,
21 public application, registered technician and private applicator;

22 (5) Revoking, suspending or denying licenses, registration and certification or certificate
23 or permits;

24 (6) Creating advisory committees made up of both pesticide industry representatives and
25 consumers as considered necessary to implement this article;

26 (7) Establishing a fee structure for licenses, registration and certificate to defray the costs
27 of implementing this article;

28 (8) Classifying or subclassifying certificate or certificates to be issued under this article.
29 The classification may include, but not be limited to, agricultural, forest, ornamental, aquatic, right-
30 of-way, industrial, institutional, structural or health-related pest control;

31 (9) Restricting or prohibiting the sale or use and disposal of any pesticide, pesticide
32 container or residue which is extremely hazardous;

33 (10) Coordinating and supporting pesticide monitoring programs;

34 (11) Developing a program for registration of persons with health sensitivity to pesticide
35 drift;

36 (12) Establishing guidelines and requirements, as deemed necessary, for licenses,
37 certificate holders and permittees for the identification of pests and their methods of inspection of

38 property to determine the presence of pests;

39 (13) Establishing procedures for reporting spills, accidents or incidents; and

40 (14) Such other rules necessary or convenient to carry out the purpose of this article;

41 (g) Design and conduct an appropriate educational program on the use of pesticides and
42 the necessity for care when applying the same; and

43 (h) Only after consultation with the State Board of Education, ~~division of human services~~
44 ~~for child welfare~~ Department of Human Services, representatives from the environmental
45 community, and representatives of school and daycare employees, by July 1, 1995, promulgate
46 emergency rules, pursuant to §29A-3-1 *et seq.* of this code, establishing an integrated pest
47 management program. The emergency and legislative rules for the program established in this
48 subsection shall include, but are not limited to, the following:

49 (1) The use of least hazardous materials;

50 (2) That pesticides shall only be applied when monitoring indicates that pest infestations
51 are present;

52 (3) That students and school and daycare employees, except school, Board of Education
53 or daycare employees that are certified applicators, shall not be present during application and
54 provide for appropriate reentry times, except that pesticides may be applied to a localized area of
55 infestation when students or school and daycare employees are present if the infestation causes
56 an imminent threat of bodily harm;

57 (4) A definition of pesticides; and

58 (5) A system for prior notification to parents and school and daycare employees.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-28. When licenses or permits not required.

1 Persons in the following categories are not required to obtain licenses or permits as

2 indicated:

3 (a) Bona fide resident landowners or their resident children, or resident parents, or bona
4 fide resident tenants of the land may hunt, trap or fish on their own land during open season in
5 accordance with the laws and rules applying to the hunting, trapping and fishing without obtaining
6 a license, unless the lands have been designated as a wildlife refuge or preserve.

7 (b) Any bona fide resident of this state who is totally blind may fish in this state without
8 obtaining a fishing license. A written statement or certificate from a duly licensed physician of this
9 state showing the resident to be totally blind shall serve in lieu of a fishing license and shall be
10 carried on the person of the resident at all times while he or she is fishing in this state.

11 (c) All residents of West Virginia on active duty in the armed forces of the United States of
12 America, while on leave or furlough, may hunt, trap or fish in season in West Virginia without
13 obtaining a license. Leave or furlough papers shall serve in lieu of any license and shall be carried
14 on the person at all times while trapping, hunting or fishing.

15 (d) In accordance with the provisions of §20-2-27 of this code, any resident sixty-five years
16 of age or older before January 1, 2012, is not required to have a license to hunt, trap or fish during
17 the legal seasons in West Virginia, but in lieu of the license the person shall at all times while
18 hunting, trapping or fishing carry on his or her person a valid West Virginia driver's license or
19 nondriver identification card issued by the Division of Motor Vehicles.

20 (e) Except as otherwise provided for in this section, residents of states that share river
21 borders with the State of West Virginia who carry hunting or fishing licenses valid in that state
22 may hunt or fish without obtaining licenses, but the hunting or fishing shall be confined to the fish
23 and waterfowl of the river proper and not on its tributaries: *Provided*, That the state shall first enter
24 into a reciprocal agreement with the director extending a like privilege of hunting and fishing to
25 licensed residents of West Virginia without requiring the residents to obtain that state's hunting
26 and fishing licenses.

27 (f) Residents of the State of Ohio who carry hunting or fishing licenses valid in that state

28 may hunt or fish on the Ohio River or from the West Virginia banks of the river without obtaining
29 licenses, but the hunting or fishing shall be confined to fish and waterfowl of the river proper and
30 to points on West Virginia tributaries and embayments identified by the director: *Provided, That*
31 the State of Ohio shall first enter into a reciprocal agreement with the director extending a like
32 privilege of hunting and fishing from the Ohio banks of the river to licensed residents of West
33 Virginia without requiring the residents to obtain Ohio hunting and fishing licenses.

34 (g) Any resident of West Virginia who was honorably discharged from the Armed Forces
35 of the United States of America and who receives a veteran's pension based on total permanent
36 service-connected disability as certified to by the Veterans Administration may hunt, trap or fish
37 in this state without obtaining a license. The director shall propose rules for legislative approval in
38 accordance with the provisions of §29A-3-1 *et seq.* of this code setting forth the procedure for the
39 certification of the veteran, manner of applying for and receiving the certification and requirements
40 as to identification while the veteran is hunting, trapping or fishing.

41 (h) Any disabled veteran who is a resident of West Virginia and who, as certified to by the
42 Commissioner of Motor Vehicles, is eligible to be exempt from the payment of any fee on account
43 of registration of any motor vehicle owned by the disabled veteran as provided in §17A-10-8 of
44 this code shall be permitted to hunt, trap or fish in this state without obtaining a license. The
45 director shall propose rules for legislative approval in accordance with the provisions of §29A-3-
46 1 *et seq.* of this code setting forth the procedure for the certification of the disabled veteran,
47 manner of applying for and receiving the certification and requirements as to identification while
48 the disabled veteran is hunting, trapping or fishing.

49 (i) Any resident or inpatient in any state mental health, health or benevolent institution or
50 facility may fish in this state, under proper supervision of the institution involved, without obtaining
51 a fishing license. A written statement or certificate signed by the superintendent of the mental
52 health, health or benevolent institution or facility in which the resident or inpatient, as the case
53 may be, is institutionalized shall serve in lieu of a fishing license and shall be carried on the person

54 of the resident or inpatient at all times while he or she is fishing in this state.

55 (j) Any resident who is developmentally disabled, as certified by a physician and the
56 ~~Director of the Division of Health~~ Secretary of the Department of Human Resources, may fish in
57 this state without obtaining a fishing license. As used in this section, "developmentally disabled"
58 means a person with a severe, chronic disability which:

59 (1) Is attributable to a mental or physical impairment or a combination of mental and
60 physical impairments;

61 (2) Is manifested before the person attains age twenty-two;(3) Results in substantial
62 functional limitations in three or more of the following areas of major life activity:

63 (A) Self-care;

64 (B) Receptive and expressive language;

65 (C) Learning;

66 (D) Mobility;

67 (E) Self-direction;

68 (F) Capacity for independent living; and

69 (G) Economic self-sufficiency; and

70 (4) Reflects the person's need for a combination and sequence of care, treatment or
71 supportive services which are of lifelong or extended duration and are individually planned and
72 coordinated.

73 (k) A student eighteen years of age or younger receiving instruction in fly fishing in a public,
74 private, parochial or Christian school in this state may fly fish in the state for catch and release
75 only without obtaining a fishing license while under the supervision of an instructor authorized by
76 the school.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-10. Prohibitions; permits required.

1 (a) Open dumps are prohibited and it is unlawful for any person to create, contribute to or
2 operate an open dump or for any landowner to allow an open dump to exist on the landowner's
3 property unless that open dump is under a compliance schedule approved by the director. Such
4 compliance schedule shall contain an enforceable sequence of actions leading to compliance and
5 shall not exceed two years. Open dumps operated prior to April 1, 1998, by a landowner or tenant
6 for the disposal of solid waste generated by the landowner or tenant at his or her residence or
7 farm are not a violation of this section if such open dump did not constitute a violation of law on
8 January 1, 1998, and unauthorized dumps which were created by unknown persons do not
9 constitute a violation of this section: *Provided*, That no person may contribute additional solid
10 waste to any such dump after April 1, 1998, except that the owners of the land on which
11 unauthorized dumps have been or are being made are not liable for such unauthorized dumping
12 unless such landowners refuse to cooperate with the division in stopping such unauthorized
13 dumping.

14 (b) It is unlawful for any person, unless the person holds a valid permit from the division
15 to install, establish, construct, modify, operate or abandon any solid waste facility. All approved
16 solid waste facilities shall be installed, established, constructed, modified, operated or abandoned
17 in accordance with this article, plans, specifications, orders, instructions and rules in effect.

18 (c) Any permit issued under this article shall be issued in compliance with the requirements
19 of this article, its rules and §22-11-1 *et seq.* of this code and the rules promulgated thereunder,
20 so that only a single permit is required of a solid waste facility under these two articles. Each
21 permit issued under this article shall have a fixed term not to exceed five years: *Provided*, That
22 the director may administratively extend a permit beyond its five-year term if the approved solid
23 waste facility is in compliance with this article, its rules and §22-11-1 *et seq.* of this code and the
24 rules promulgated thereunder: *Provided, however*, That such administrative extension may not
25 be for more than one year. Upon expiration of a permit, renewal permits may be issued in

26 compliance with rules promulgated by the director.

27 (d) For existing solid waste facilities which formerly held ~~division of health~~ Department of
28 Health and Compliance permits which expired by law and for which complete permit applications
29 for new permits pursuant to this article were submitted as required by law, the division may enter
30 an administrative order to govern solid waste activities at such facilities, which may include a
31 compliance schedule, consistent with the requirements of the division's solid waste management
32 rules, to be effective until final action is taken to issue or deny a permit for such facility pursuant
33 to this article, or until further order of the division.

34 (e) No person may dispose in the state of any solid waste in a manner which endangers
35 the environment or the public health, safety or welfare as determined by the director: *Provided,*
36 That the carcasses of dead animals may be disposed of in any solid waste facility or in any other
37 manner as provided for in this code. Upon request by the director, the commissioner of the bureau
38 of public health shall provide technical advice concerning the disposal of solid waste or carcasses
39 of dead animals within the state.

40 (f) A commercial solid waste facility shall not discriminate in favor of or against the receipt
41 of any waste otherwise eligible for disposal at the facility based on its geographic origin.

42 (g) In addition to all the requirements of this article and the rules promulgated hereunder,
43 a permit to construct a new commercial solid waste facility or to expand the spatial area of an
44 existing facility, may not be issued unless the public service commission has granted a certificate
45 of need, as provided in §24-2-1c of this code. If the director approves a permit or permit
46 modification, the certificate of need shall become a part of the permit and all conditions contained
47 in the certificate of need shall be conditions of the permit and may be enforced by the division in
48 accordance with the provisions of this article. If the director approves a permit or permit
49 modification, the certificate of need shall become a part of the permit and all conditions contained
50 in the certificate of need shall be conditions of the permit and may be enforced by the division in
51 accordance with the provisions of this article: *Provided,* That the provisions of this subsection do

52 not apply to materials recovery facilities or mixed waste processing facilities as defined by §22-
53 15-2 of this code, except within a thirty-five mile radius of a facility sited in a karst geological region
54 and which has been permitted by the West Virginia Department of Environmental Protection as a
55 mixed waste processing facility and has received a certificate of need by July 1, 2016.

56 (h) The director shall promulgate legislative rules pursuant to §29A-3-1 *et seq.* of this code
57 which reflect the purposes as set forth in this section.

ARTICLE 28. COMMUNITY INFRASTRUCTURE INVESTMENT PROJECTS.

§22-28-4. Community infrastructure investment agreements; report to Joint Committee on Government and Finance.

1 (a) Municipal utilities and public service districts have the power and authority to enter into
2 community infrastructure investment agreements with any person for the purpose of constructing
3 new project facilities or substantially improving or expanding project facilities.

4 (b) Notwithstanding any other provision in this code to the contrary, the secretary shall
5 have the power and the authority to review and approve all such community infrastructure
6 investment agreements pursuant to this article.

7 (c) Each such agreement shall contain as a minimum the following terms and conditions
8 to be performed by the parties thereto:

9 (1) The project facilities shall be engineered and constructed in accordance with the
10 requirements for new construction established by the municipal utility or public service district;

11 (2) Proof or certification of the financial ability of the municipal utility or public service
12 district to maintain and operate the public facilities;

13 (3) Certification that upon completion and activation of the project facility or improvements
14 to the project facility, the title to the public facility shall be transferred without cost to the municipal
15 utility or public service district;

16 (4) A finding that the construction of the new public facility, or the substantial improvement

17 or expansion of an existing public facility, either: (i) Fosters economic growth by promoting
18 commercial, industrial or residential development; and (ii) improves water quality or otherwise
19 enables the affected territory to achieve compliance with any applicable state or federal health or
20 environmental law;

21 (5) The municipal utility or public service district will receive or otherwise obtain without
22 cost to the public all necessary rights-of-way for the operation of the public facility;

23 (6) The rates charged by the municipal utility or public service district to new customers to
24 be served by the project facility shall be the rates in effect at the time of transfer of the project
25 facility to the utility plus any additional cost of service borne by the municipal utility or public
26 service district as a result of the project facility until such time as new rates may be finally enacted
27 by the municipal utility or proposed by the public service district and approved by the Public
28 Service Commission and the rates charged by the municipal utility or the public service district to
29 existing customers shall not be impacted as a result of the obligation of the public service district
30 or municipal utility pursuant to the community infrastructure investment agreement;

31 (7) Confirmation that the agreement does not violate any of the bond covenants imposed
32 on the municipal utility or public service district;

33 (8) Proof that necessary permits, where applicable, have been obtained from the ~~Division~~
34 ~~of Health~~ Department of Health and Compliance and the Department of Environmental Protection;

35 (9) Evidence that the person responsible for the construction of or improvements to the
36 public facility has provided funding to the municipal utility or public service district for the
37 engagement of an engineer qualified to design and certify the structural integrity and capacity of
38 the project facility;

39 (10) Proof that the person responsible for construction of or improvements to the public
40 facility has obtained a performance bond payable to the municipal utility or public service district
41 equal to the estimated cost of construction: *Provided*, That the form of the bond required by this
42 section shall be approved by the secretary and may include, at the option of the secretary, surety

43 bonding, collateral bonding (including cash and securities), establishment of an escrow account,
44 letters of credit, performance bonding fund participation as established by the secretary, self-
45 bonding or a combination of these methods; and

46 (11) Any other conditions that the secretary may determine to be relevant as established.

47 (d) Where the secretary has found that the community infrastructure investment
48 agreement meets the requirements contained in this article, the secretary shall issue a certificate
49 of appropriateness to the parties as evidence of such approval.

50 (e) Not later than thirty days prior to the issuance of a certificate of appropriateness for
51 any community infrastructure investment project, the secretary shall first submit a report of the
52 same to the Joint Committee on Government and Finance.

**§22-28-5. Authority of the Department of Environmental Protection and ~~Division of Health~~
Department of Health and Compliance not affected.**

1 Nothing contained in this article shall be construed to affect the authority of the Department
2 of Environmental Protection pursuant to the provisions of this chapter, nor the authority of the
3 ~~Division of Health~~ Department of Health and Compliance pursuant to the provisions of chapter 16
4 of this code. Facilities discharging into the Potomac River watershed and its tributaries shall be
5 designed to achieve nutrient reductions, for both Nitrogen and Phosphorus, consistent with West
6 Virginia's participation in the Chesapeake Bay Program upon implementation of the Chesapeake
7 Bay standards by the secretary.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,
AUTHORITIES, COMMISSIONS AND COMPACTS.**

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

**§22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste
management board and the Public Service Commission to file report.**

1 (a) Each person occupying a residence or operating a business establishment in this state

2 shall either:

3 (1) Subscribe to and use a solid waste collection service and pay the fees established
4 therefor; or

5 (2) Provide proper proof that said person properly disposes of solid waste at least once
6 within every thirty-day period at approved solid waste facilities or in any other lawful manner. The
7 Secretary of the Department of Environmental Protection shall promulgate rules pursuant to
8 chapter 29A of this code regarding an approved method or methods of supplying such proper
9 proof. A civil penalty of \$150 may be assessed to the person not receiving solid waste collection
10 services in addition to the unpaid fees for every year that a fee is not paid. Any person who violates
11 the provisions of this section by not lawfully disposing of his or her solid waste or failing to provide
12 proper proof that he or she lawfully disposes of his or her solid waste at least once a month is
13 guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$50 nor
14 more than \$1,000 or sentenced to perform not less than ten nor more than forty hours of
15 community service, such as picking up litter, or both fined and sentenced to community service.

16 (b) The Solid Waste Management Board, in consultation and collaboration with the Public
17 Service Commission, shall prepare and submit, no later than October 1, 1992, a report concerning
18 the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in
19 West Virginia: *Provided*, That such plan shall consider such factors as affordability, impact on
20 open dumping and other relevant matters. The report shall be submitted to the Governor, the
21 President of the Senate and the Speaker of the House of Delegates.

22 (c) The Public Service Commission, in consultation and collaboration with the ~~Division~~
23 Department of Human Services, shall prepare and submit, no later than October 1, 1992, a report
24 concerning the feasibility of reducing solid waste collection fees to individuals who directly pay
25 such fees and who receive public assistance from state or federal government agencies and are
26 therefore limited in their ability to afford to pay for solid waste disposal. This report shall consider
27 the individual's health and income maintenance and other relevant matters. This report shall also

28 include recommended procedures for individuals or households to qualify for and avail
29 themselves of a reduction in fees. This report shall be submitted to the Governor, the President
30 of the Senate and the Speaker of the House of Delegates.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources Healthcare Facilities; establishment of work and study release units; contracting with certain entities for reentry and direct placement services; reports to Governor.

1 (a) The Commissioner of Corrections shall manage, direct, control and govern the
2 following penal or correctional institutions and any others placed under his or her jurisdiction or
3 control:

4 Mount Olive Correctional Complex;
5 Huttonsville Correctional Center;
6 Anthony Correctional Center;
7 Denmark Correctional Center;
8 Pruntytown Correctional Center;
9 Northern West Virginia Correctional Center;
10 St. Marys Correctional Center;
11 Lakin Correctional Center;
12 Ohio County Correctional Center;
13 Beckley Correctional Center;
14 Martinsburg Correctional Center;
15 Salem Correctional Center; and
16 Parkersburg Correctional Center.

17 (b) The Commissioner of Corrections may contract with the County Commission of
18 McDowell County to house and incarcerate inmates at the Stevens Correctional Center consistent
19 with all requirements and standards governing the Division of Corrections.

20 (c) Jurisdiction of and title to the West Virginia Children's Home at Elkins are hereby
21 transferred to the Department of ~~Health and Human Resources~~ Healthcare Facilities, which is the
22 custodian of all deeds and other muniments of title to the property and shall record those that are
23 susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of
24 this code to the contrary, the West Virginia Children's Home shall be managed and controlled by
25 a superintendent appointed by the ~~Commissioner of the Division of Human Services~~ Secretary of
26 the Department of Healthcare Facilities.

27 (d) The Commissioner of Corrections may establish work and study release units as
28 extensions and subsidiaries of those state institutions under his or her control and authority. The
29 work and study release units may be coeducational and shall be managed, directed and controlled
30 as provided in this article.

31 (e) (1) The commissioner may contract with nonprofit or charitable entities including, but
32 not limited to, nonprofit community mental health clinics, operating half-way houses or transitional
33 housing facilities for the placement of persons in the commissioner's custody, whether confined
34 or under parole supervision, as long as such facilities meet standards and criteria established by
35 the commissioner.

36 (2) (A) The Commissioner of Corrections may direct that a person who is placed in a half-
37 way house or transitional housing facility under this section make reimbursement to the state in
38 the amount of a reasonable sum calculated to offset all or part of the costs of the placement.

39 (B) Prior to ordering the person to make the reimbursement, the commissioner, or his or
40 her designee, shall consider the following:

41 (i) The person's ability to pay;

42 (ii) The nature and extent of the person's responsibilities to his or her dependents, if any;

- 43 (iii) The length of probable incarceration under the court's sentence; and
- 44 (iv) The effect, if any, that reimbursement might have on the person's rehabilitation.
- 45 (f) The Division of Corrections shall provide the number of persons placed in a half-way
- 46 house or a transitional housing facility pursuant to subsection (e) of this section in its report made
- 47 pursuant to §5-1-20 of this code, and shall describe its plans to use the authority provided under
- 48 the provisions of subsection (e) of this section in furtherance of the duties and responsibilities
- 49 imposed by this article.
- 50 (g) Any person employed by the Office of Public Institutions is a classified civil service
- 51 employee within the limits contained in §29-6-2 of this code.

CHAPTER 27. BEHAVIORAL HEALTH.

ARTICLE 1. DEFINITIONS.

§27-1-1. Defined words and phrases.

- 1 The following words and phrases as used in this chapter have the following meaning
- 2 unless the context clearly requires a different meaning.
- 1 "Addiction" means a maladaptive pattern of substance use leading to clinically significant
- 2 impairment or distress as manifested by one or more of the following occurring within thirty days
- 3 prior to the filing of the petition:
- 4 (A) Recurrent substance use resulting in a failure to fulfill major role obligations at work,
- 5 school or home, including, but not limited to, repeated absences or poor work performance related
- 6 to substance use; substance-related absences, suspensions or expulsions from school; or neglect
- 7 of children or household;
- 8 (B) Recurrent use in situations in which it is physically hazardous, including, but not limited
- 9 to, driving while intoxicated or operating a machine when impaired by substance use;
- 10 (C) Recurrent substance-related legal problems; or
- 11 (D) Continued use despite knowledge or having persistent or recurrent social or

12 interpersonal problems caused or exacerbated by the effects of the substance.

13 "Behavioral health facility" means any inpatient, residential or outpatient facility for the
14 care and treatment of the mentally ill, intellectually disabled or addicted which is operated, by the
15 West Virginia Department of Healthcare Facilities and includes state hospitals as defined in this
16 article. The term also includes veterans administration hospitals, but does not include any regional
17 jail, juvenile or adult correctional facility, or juvenile detention facility.

18 "Bureau" means the West Virginia Bureau for Behavioral Health.

19 "Chief executive officer" means the person in charge of administrating a state-operated
20 treatment facility and has the authority to manage and administer the financial, business and
21 personnel affairs of such facility. All other persons employed at the state-operated treatment
22 facility are under the jurisdiction and authority of the administrator of the treatment facility who
23 need not be a physician.

24 "Chief medical officer" means the physician responsible for medical programs within a
25 behavioral health facility and includes the clinical director of a state hospital.

26 "Clinical Director" means the person who has the responsibility for decisions involving
27 clinical and medical treatment of patients in a state-operated behavioral health facility. The clinical
28 director must be a physician duly licensed to practice medicine in this state who has completed
29 training in an accredited program of post-graduate education in psychiatry. In any facility
30 designated by the Secretary of the Department of Healthcare Facilities as a facility for individuals
31 with an intellectual disability in which programs and services are designed primarily to provide
32 education, training and rehabilitation rather than medical or psychiatric treatment, the duties and
33 responsibilities, other than those directly related to medical treatment services, assigned to the
34 clinical director by this chapter, are assigned to and become the responsibility of the administrator
35 of that facility, or of a person with expertise in the field of intellectual disability. This person need
36 not be a physician and shall be designated by the administrator.

37 "Commissioner" means the Commissioner of the West Virginia Bureau for Behavioral

38 Health.

39 “Department means the West Virginia Department of Human Services.

40 "Detained or taken into custody" where used in this chapter, shall permit detention for
41 custody in a county facility which may be in the same building as the county jail if the said county
42 facility:

43 (A) Meets the standards which the West Virginia Department of Health and Compliance
44 shall prescribe; and

45 (B) Is approved for such use by the West Virginia Department of Health and Compliance;
46 and

47 (C) Is inspected annually by the West Virginia Department of Health and Compliance.

48 "Incapacitated" means a level of intoxication at which an individual is incapable of physical
49 or mental control of himself or herself, thus rendering him or her dangerous to himself or herself
50 or others or unable to protect himself or herself from hazard.

51 "Inebriate" means a person over the age of eighteen years who is incapable or unfit to
52 properly conduct himself or herself, or his or her affairs, or is dangerous to himself or herself or
53 others, by reason of periodical, frequent or constant drunkenness, induced either by the use of
54 alcoholic or other liquors, or of opium, morphine, or other narcotic or intoxicating or stupefying
55 substance.

56 "Intellectual disability" means significantly subaverage intellectual functioning which
57 manifests itself in a person during his or her developmental period and which is characterized by
58 his or her inadequacy in adaptive behavior. Notwithstanding any provision to the contrary, if any
59 service provision or reimbursement is affected by the changes in terminology adopted in the 2010
60 First Extraordinary Session of the Legislature, the terms "intellectual disability" or "individuals with
61 an intellectual disability" shall assume their previous terminology. It is not the intent of the
62 Legislature to expand the class of individuals affected by this terminology change.

63 "Judicial officer" in the context of the provisions of this and other chapters of this code

64 dealing with disposition of a charge of public intoxication, means a municipal judge, a magistrate
65 or any judge of a court of record in this state.

66 "Likely to cause serious harm" means an individual is exhibiting behaviors consistent with
67 a medically recognized mental disorder or addiction, excluding, however, disorders that are
68 manifested only through antisocial or illegal behavior and as a result of the mental disorder or
69 addiction:

70 (A) The individual has inflicted or attempted to inflict bodily harm on another;

71 (B) The individual, by threat or action, has placed others in reasonable fear of physical
72 harm to themselves;

73 (C) The individual, by action or inaction, presents a danger to himself or herself, or others
74 in his or her care;

75 (D) The individual has threatened or attempted suicide or serious bodily harm to himself
76 or herself; or

77 (E) The individual is behaving in a manner as to indicate that he or she is unable, without
78 supervision and the assistance of others, to satisfy his or her need for nourishment, medical care,
79 shelter or self-protection and safety so that there is a substantial likelihood that death, serious
80 bodily injury, serious physical debilitation, serious mental debilitation or life-threatening disease
81 will ensue unless adequate treatment is afforded.

82 (F) In making the "likely to cause serious harm" determination, judicial, medical,
83 psychological and other evaluators and decision makers should utilize all available information,
84 including psychosocial, medical, hospitalization and psychiatric information and including the
85 circumstances of any previous commitments or convalescent or conditional releases that are
86 relevant to a current situation, in addition to the individual's current overt behavior. The rules of
87 evidence shall be followed in making the "likely to cause serious harm" determination except that
88 hearsay evidence not admissible thereunder may be admitted, except where precluded by statute,
89 if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

90 "Mental illness" means a manifestation in a person of significantly impaired capacity to
91 maintain acceptable levels of functioning in the areas of intellect, emotion and physical well-
92 being.

93 "Physician" means a person licensed pursuant to the laws of this state to practice medicine
94 or a medical officer of the government of the United States while in this state in the performance
95 of his or her official duties.

96 "Psychologist" means any person licensed pursuant to the laws of this state to engage in
97 the practice of psychology, or any other psychologist not a resident of this state who engages in
98 the practice of psychology in this state and who holds a license or certificate to engage in the
99 practice of psychology issued by another state with licensing or certification requirements
100 comparable to the licensing requirements of this state, as may be determined by the State Board
101 of Examiners of Psychologists.

102 "Psychiatrist" means a physician licensed pursuant the laws of this state to practice
103 medicine who has completed training in an accredited program of post-graduate education in
104 psychiatry.

105 "Resident of the state" means any person who has had an established residency in this
106 state for at least one year, and a "resident of the county" is any person who has had an established
107 residency in a county for at least sixty days.

108 "Secretary" means the Secretary of the West Virginia Department of Human Services.
109 Any reference in this chapter and this code to Director or Director of the Division of Health means
110 the Secretary of the Department of Human Services.

111 "State hospital" means any hospital, center or institution, or part of any hospital, center or
112 institution, established, maintained and operated by the Department of Healthcare Facilities, or
113 by the Department of Healthcare Facilities. in conjunction with a political subdivision of the state,
114 to provide inpatient or outpatient care and treatment for the mentally ill, intellectually disabled or
115 addicted. The terms "hospital" and "state hospital" exclude correctional and regional jail facilities.

116 "Substance" means alcohol, controlled substances as defined in §60A-2- 204, §60A-2-
117 206, §60A-2- 208 and §60A-2- 210 of this code or anything consumed for its psychoactive effect
118 whether or not designed for human consumption.

ARTICLE 2. BUREAU FOR BEHAVIORAL HEALTH.

§27-2-1. Statement of policy.

1 The purpose of this article is to improve the the standards of treatment of the mentally ill
2 and intellectually disabled, encourage the further development of outpatient and diagnostic clinics,
3 establish better research and training programs, and promote the development of behavioral
4 health.

§27-2-2. Creation; composition.

1 Effective on the first day of July, 2018, there shall be a Bureau for Behavioral Health within
2 the Department. The bureau shall be under the immediate supervision of a commissioner, who
3 is responsible for the exercise of duties and powers assigned the bureau in this chapter.

§27-2-3. Appointment of commissioner; qualifications; oath; compensation.

1 (a) There is created the position of commissioner. The commissioner shall:

2 (1) Be appointed by the Governor with advice and consent of the Senate;

3 (2) Report directly to the secretary;

4 (3) Serve at the will and pleasure of the Governor;

5 (4) Serve on a full-time basis and shall not engage in any other profession or occupation,
6 including the holding of a political office in the state either by election or appointment, while serving
7 as commissioner; and

8 (5) Have an appropriate educational level and have responsible administrative
9 experience, possess management skills and have knowledge of behavioral health.

10 (b) Before entering upon the discharge of the duties as commissioner, the commissioner
11 shall take and subscribe to the oath of office prescribed in section five, article IV of the Constitution
12 of West Virginia.

13 (c) The commissioner shall receive:

14 (1) A reasonable and competitive compensation package to be established by the
15 secretary; and

16 (2) Reimbursement for expenses under the standard state travel regulations.

17 (d) Notwithstanding any other provision of this code to the contrary, whenever in this code
18 there is a reference to the director of the department of mental health or to the commissioner of
19 the department of mental health it shall be construed to mean and shall be a reference to the
20 Commissioner of the Bureau for Behavioral Health.

§27-2-4. Powers and duties of the commissioner.

1 (a) In addition to the powers and duties set forth in any other provision of this code, the
2 commissioner has the following powers and duties:

3 (1) To develop and maintain a state plan which:

4 (A) Sets forth needs of the state in the areas of mental and behavioral health and
5 intellectual disability;

6 (B) Sets forth goals and objectives for meeting those needs; and

7 (C) Contains plans of operation for achieving the stated goals and objectives, including
8 organizational structure; and statement of requirements in personnel funds and authority for
9 achieving the goals and objectives.

10 (2) To appoint deputies and assistants to supervise the bureau's programs, including
11 hospital and residential services, and such other assistants and employees as may be necessary
12 for the efficient operation of the bureau and all its programs.

13 (3) To delegate to any of his or her appointees, assistants or employees all powers and
14 duties vested in the commissioner, including the power to execute contracts and agreements in
15 the name of the bureau as provided in this article. The commissioner shall be responsible for the
16 acts of such appointees, assistants and employees.

17 (b) The commissioner is authorized and empowered to accept and use for any mental

18 health purpose specified in this chapter, any gift or devise of any property or thing which lawfully
19 may be given. Any gift or devise of any property or thing which lawfully may be given and whatever
20 profit may arise from its use or investment shall be deposited in a special revenue fund with the
21 State Treasurer, and shall be used only as specified by the donor or donors.

§27-2-5. Organization and employees.

1 (a) The commissioner shall organize the work of the bureau in such offices or other
2 organizational units as he or she may determine to be necessary for effective and efficient
3 operation.

4 (b) The commissioner shall employ a sufficient number of employees so as to provide for
5 the effective and efficient operation of the bureau.

6 (c) The secretary may transfer employees and resources of the department to the bureau
7 as may be necessary to fulfill the duties and responsibilities of the bureau pursuant to this chapter.
8 The secretary may not transfer employees of other divisions and agencies within the department
9 to the bureau without a prior finding that the office or position held by the employee may be
10 eliminated and until the office or position is, in fact, eliminated.

11 (d) The commissioner, if he or she deems such action necessary, may hire legal counsel
12 for the bureau, notwithstanding the provisions of §5-3-2 of this code or any other code provision
13 to the contrary, or may request the Attorney General to appoint counsel who shall perform such
14 duties as may be required by the bureau. The Attorney General, in pursuance of such request,
15 may select and appoint counsel to serve during the will and pleasure of the Attorney General, and
16 shall be paid out of any funds allocated and appropriated to the bureau.

§27-2-6. Supervisory responsibilities of the commissioner.

1 The commissioner shall have control and supervision of the bureau and shall be
2 responsible for the work of each of its organizational units. Each organizational unit shall be
3 headed by an employee of the bureau appointed by the commissioner who shall be responsible
4 to the commissioner for the work of his or her organizational unit.

§27-2-7. General powers and duties of the Bureau of Behavioral Health.

1 In carrying out the policies and procedures for enforcing the provisions of this chapter, the
2 bureau shall have the following power and authority:

3 (1) To recruit, educate and train professional staff;

4 (2) To act as a liaison with other state entities and private groups with an interest in
5 behavioral and mental health;

6 (3) To establish standards for, and supervise the operation of, community mental health
7 clinics for adults and children and to develop new community facilities and community service
8 programs for the overall improvement of the regional behavioral health facilities;

9 (4) To offer behavioral health services to adults and children with diagnosed behavioral
10 health issues and those with intellectual disabilities;

11 (5) To offer substance abuse programs for persons with alcohol and substance use issues
12 such as education, rehabilitation and prevention;

13 (6) To develop a comprehensive and practical program of mental and behavioral health
14 education of the public, especially at the local level;

15 (7) To work with county mental hygiene commissions and circuit courts;

16 (8) To determine and approve schedules of reasonable cost for reimbursement by the
17 patient or responsible relative for mental health services rendered; and

18 (9) To perform any other duties assigned to the bureau by the secretary.

ARTICLE 3. SUICIDE PREVENTION AND AWARENESS.**§27-3-1. Dissemination of information.**

1 (a) The bureau shall post on its website suicide prevention awareness information, to
2 include recognizing the warning signs of a suicide crisis. The website shall include information
3 related to suicide prevention training opportunities offered by the bureau or an agency recognized
4 by the bureau as a training provider.

5 (b) The bureau may assist public middle and high school administrators in providing

6 suicide prevention information to students in public middle and high schools.

7 (c) The bureau shall annually review, for adequacy and completeness, the materials or
8 programs posted on the websites of the institutions of higher education as required by §18B-1B-
9 7 of this code.

ARTICLE 4. CONFIDENTIALITY.

§27-4-1. Confidential information; disclosure.

1 (a) Communications and information obtained in the course of treatment or evaluation of
2 any client or patient are confidential information. Such confidential information includes:

3 (1) The fact that a person is, or has been, a client or patient;

4 (2) Information transmitted by a patient or client or family thereof for purposes relating to
5 diagnosis or treatment;

6 (3) Information transmitted by persons participating in the accomplishment of the
7 objectives of diagnosis or treatment;

8 (4) All diagnoses or opinions formed regarding a client's or patient's physical, mental or
9 emotional condition;

10 (5) Any advice, instructions or prescriptions issued in the course of diagnosis or treatment;
11 and

12 (6) Any record or characterization of the matters herein described.

13 (b) Communication and information does not include information which does not identify
14 a client or patient, information from which a person acquainted with a client or patient would not
15 recognize such client or patient and uncoded information from which there is no possible means
16 to identify a client or patient.

17 (c) Confidential information shall not be disclosed, except:

18 (1) In an involuntary proceeding conducted pursuant to this chapter to disclose the results
19 of an involuntary examination made pursuant to §27-14-2, §27-14-3 or §27-14-4 of this code;

20 (2) In a proceeding under §27-10-1 et seq. of this code to disclose the results of an
21 involuntary examination made pursuant thereto;

22 (3) Pursuant to an order of any court based upon a finding that the information is
23 sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining
24 the confidentiality established by this section;

25 (4) To provide notice to the federal National Instant Criminal Background Check System,
26 established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C.
27 §922, in accordance with §61-7A-1 et seq. of this code;

28 (5) To protect against a clear and substantial danger of imminent injury by a patient or
29 client to himself, herself or another;

30 (6) For treatment or internal review purposes, to staff of the behavioral health facility where
31 the patient is being cared for or to other health professionals involved in treatment of the patient;
32 and

33 (7) Without the patient's consent as provided for under the Privacy Rule of the federal
34 Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days
35 from the date of admission to a behavioral health facility if:

36 (A) The provider makes a good faith effort to obtain consent from the patient or legal
37 representative prior to disclosure;

38 (B) the minimum information necessary is released for a specifically stated purpose; and

39 (C) prompt notice of the disclosure, the recipient of the information and the purpose of the
40 disclosure is given to the patient or legal representative.

§27-4-2. Authorization of disclosure of confidential information.

1 (a) No consent or authorization for the transmission or disclosure of confidential
2 information is effective unless it is in writing and signed by the patient or client or by his or her
3 legal guardian.

4 (b) Every person signing an authorization shall be given a copy.

5 (c) Every person requesting the authorization shall inform the patient, client or authorized
6 representative that refusal to give the authorization will in no way jeopardize his or her right to
7 obtain present or future treatment.

ARTICLE 5. RELEASE, DISCHARGE AND READMISSION OF PATIENTS;
ESCAPEES.

§27-5-1. Discharge.

1 The chief medical officer of the behavioral health facility shall continually review the case
2 of each individual who is an involuntary patient at the facility pursuant to §27-14-1 et seq. of this
3 code. The chief medical officer shall as frequently as practicable, in any event at least once every
4 three months, cause a complete psychiatric examination of each patient, and whenever it is
5 determined that the conditions justifying involuntary hospitalization no longer exist or that the
6 individual can no longer benefit from hospitalization, the chief medical officer shall discharge the
7 patient. Upon discharge the chief medical officer shall forward a copy of the patient's discharge
8 to the clerk of the circuit court or mental hygiene commissioner of the county in which the
9 involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner
10 of the county wherein the individual is a resident.

§27-5-2. Release of patients on convalescent status.

1 (a) The chief medical officer of a behavioral health facility may release an involuntary
2 patient on convalescent status (trial visit) when the chief medical officer believes such release is
3 in the best interest of the patient. Release on convalescent status shall include provisions for
4 continuing responsibility to and by a behavioral health facility, not necessarily the facility in which
5 the patient was previously hospitalized, including a plan of treatment on an outpatient basis to
6 ensure that the patient receives whatever care and treatment he or she might require. At the end
7 of six months on convalescent status, the patient must be discharged from any involuntary
8 commitment order that might have been entered against him or her and he or she cannot be

9 involuntarily returned to any behavioral health facility unless a new commitment proceeding has
10 been instituted against him or her. When a patient released on convalescent status is discharged
11 from his or her involuntary commitment, it shall be the responsibility of the chief medical officer of
12 the behavioral health facility of which the individual was a patient prior to being placed on
13 convalescent status to immediately make a report of the discharge of the patient to the circuit
14 court or mental hygiene commissioner of the county in which the involuntary hospitalization was
15 ordered and to the circuit court or mental hygiene commissioner of the county wherein the
16 individual is a resident.

17 (b) Notwithstanding any provision of this code to the contrary, anytime an individual is
18 involuntarily committed to a behavioral health facility for inpatient treatment pursuant to the
19 provisions of §27-9-1 et seq. of this code due to a mental illness and it is determined by the
20 medical director of the behavioral health facility that the use of medication by the individual is
21 necessary to avoid the recurrence of the behavior which caused the involuntary hospitalization,
22 initial release from the behavioral health facility shall be on convalescent status. This initial release
23 shall be with the requirement that the individual follow a designated treatment plan which may
24 include the taking of medication unless the medical director makes a written finding that release
25 on convalescent status will serve no treatment purpose. If an individual released on convalescent
26 status does not comply with the terms and conditions of convalescent status, any person may file
27 a petition to revoke such convalescent status and said petition shall be subject to the procedures
28 and provisions of this article.

§27-5-3. Release as unimproved.

1 (a) The chief medical officer of a behavioral health facility may release an involuntary
2 patient as unimproved when any person requests the patient's release and is willing and able to
3 take proper care of the patient outside the behavioral health facility. In the event that a patient is
4 released to a responsible person, a report shall be made by such person at least once every six
5 months to the chief medical officer of the behavioral health facility. No discharge shall be given to

6 said patient until he or she has returned to the behavioral health facility for examination by the
7 chief medical officer and he or she has determined that said patient is no longer in need of
8 hospitalization.

9 (b) When a patient is released from a behavioral health facility as unimproved, it shall be
10 the responsibility of the chief medical officer of the behavioral health facility of which the individual
11 was a patient prior to being released as unimproved to immediately make a report of the discharge
12 of the patient to the circuit court or mental hygiene commissioner of the county in which the
13 involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner
14 of the county wherein the individual is a resident.

§27-5-4. Readmission of patients.

1 While any involuntary patient is out of the behavioral health facility pursuant to the
2 provisions of §27-5-2 or §27-5-3 of this code, he or she may be readmitted to the behavioral health
3 facility on the basis of the original commitment. If there is reason to believe that it is in the best
4 interest of the patient to be hospitalized, the chief medical officer of the behavioral health facility
5 may issue a sworn notice for the immediate readmission of the patient, which notice shall contain
6 facts concerning the original commitment and the current condition of the patient. This notice shall
7 be sent to the clerk of the circuit court which ordered his or her admission, to the clerk of the circuit
8 court of the county of the patient's residence, to the circuit court or mental hygiene commissioner
9 of the county in which the patient may be found and to the patient at the location where the patient
10 may be found. Upon receipt of such notice, the circuit court or mental hygiene commissioner may,
11 if satisfied that the condition of the patient warrants his or her return, authorize any health officer
12 or police officer to take the patient into custody and transport him or her to the behavioral health
13 facility where the notice originated.

§27-5-5. Return of escapees; veterans.

1 (a) If any person confined in a behavioral health facility, pursuant to §27-6-1 et seq. or
2 §27-16-1 et seq. of this code, escapes therefrom, the chief medical officer thereof may issue a

3 notice, giving the name and description of the person escaping and requesting the patient's
4 apprehension and return to the behavioral health facility. The chief medical officer may issue an
5 order directed to the sheriff of the county in which the patient is a resident, commanding him or
6 her to take into custody and transport such escaped person back to the behavioral health facility,
7 which order the sheriff may execute in any part of the state. If such person goes to another state,
8 the chief medical officer may notify the commissioner and the commissioner may take such action
9 as he or she may deem proper for the return of such person to the behavioral health facility.

10 (b)(1) If any veteran duly committed to a veterans' hospital or other veterans' institution,
11 either within or without the state, escapes therefrom and any person makes complaint, under
12 oath, to the clerk of the circuit court of the county from which such veteran was so committed
13 upon the order of the circuit court, giving such information and stating such facts therein as may
14 be required; or

15 (2) If any veteran duly committed to a veterans' hospital or other veterans' institution, either
16 within or without the state, escapes therefrom and the chief medical officer of such hospital or
17 institution issues a notice to the clerk of the circuit court of the county from which such veteran
18 was so committed upon the order of the circuit court, giving the name and description of such
19 veteran and requesting his or her apprehension and return to such hospital or institution;

20 (3) The circuit court upon receipt of such complaint or of such notice, may issue an order
21 directed to the sheriff of the county from which the veteran was so committed commanding him
22 or her to take into custody and transport such veteran back to such hospital or institution, which
23 order the sheriff may execute in any part of the state.

24 (c) The sheriff or other person taking any person into custody pursuant this section shall
25 be paid such compensation as is provided for like services in other cases.

26 (d) A person who is taken into custody pursuant this section may be detained, but not
27 incarcerated in a jail or penal institution, for a period not in excess of fourteen hours, pending
28 return to the appropriate behavioral health facility.

ARTICLE 6. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS
CHARGED OR CONVICTED OF A CRIME.

§27-6-1. Definitions and requirements.

1 (a) For purposes of this article:

2 (1) A "qualified forensic psychiatrist" is:

3 (A) A psychiatrist licensed pursuant to the laws in this state to practice medicine who has
4 completed post-graduate education in psychiatry in a program accredited by the Accreditation
5 Council of Graduate Medical Education; and

6 (B) Board eligible or board certified in forensic psychiatry by the American Board of
7 Psychiatry and Neurology or actively enrolled in good standing in a West Virginia training program
8 accredited by the Accreditation Council of Graduate Medical Education to make the evaluator
9 eligible for board certification by the American Board of Psychiatry and Neurology in forensic
10 psychiatry or, has two years of experience in completing court-ordered forensic criminal
11 evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

12 (2) A "qualified forensic psychologist" is:

13 (A) A licensed psychologist licensed pursuant to the laws of this state to practice
14 psychology; and

15 (B) Board eligible or board certified in forensic psychology by the American Board of
16 Professional Psychology or actively enrolled in good standing in a West Virginia training program
17 approved by the American Board of Forensic Psychology to make the evaluator eligible for board
18 certification in forensic psychology or, has at least two years of experience in performing court-
19 ordered forensic criminal evaluations, including having been qualified as an expert witness by a
20 West Virginia circuit court.

21 (3) A "qualified forensic evaluator" is either a qualified forensic psychiatrist or a qualified
22 forensic psychologist as defined in this article.

23 (4) "Department" means the Department of Health and Compliance.

24 (b) No qualified forensic evaluator may perform a forensic evaluation on an individual
25 pursuant to this chapter if the qualified forensic evaluator has been the individual's treating
26 psychologist or psychiatrist within one year prior to any evaluation order.

§27-6-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period.

1 (a) Whenever a court of record has reasonable cause to believe that a defendant in which
2 an indictment has been returned, or a warrant or summons issued, may be incompetent to stand
3 trial it shall, sua sponte or upon motion filed by the state or by or on behalf of the defendant, at
4 any stage of the proceedings order a forensic evaluation of the defendant's competency to stand
5 trial. This evaluation is to be conducted by one or more qualified forensic psychiatrists, or one or
6 more qualified forensic psychologists. If a court of record or other judicial officer orders both a
7 competency evaluation and a criminal responsibility or diminished capacity evaluation, the
8 competency evaluation shall be performed first. If a qualified forensic evaluator is of the opinion
9 that a defendant is not competent to stand trial, no criminal responsibility or diminished capacity
10 evaluation may be conducted without further order of the court. The initial forensic evaluation may
11 not be conducted at a state inpatient behavioral health facility unless the defendant resides there.

12 (b) The court shall require the party making the motion for the evaluation, and other parties
13 as the court considers appropriate, to provide to the qualified forensic evaluator appointed
14 pursuant to subsection (a) of this section any information relevant to the evaluations within ten
15 business days of its evaluation order. The information shall include, but not be limited to:

16 (1) A copy of the warrant or indictment;

17 (2) Information pertaining to the alleged crime, including statements by the defendant
18 made to the police, investigative reports and transcripts of preliminary hearings, if any;

19 (3) Any available psychiatric, psychological, medical or social records that are considered
20 relevant;

21 (4) A copy of the defendant's criminal record; and

22 (5) If the evaluations are to include a diminished capacity assessment, the nature of any
23 lesser included criminal offenses.

24 (c) A qualified forensic evaluator shall schedule and arrange for the prompt completion of
25 any court-ordered evaluation which may include record review and defendant interview and shall,
26 within ten business days of the date of the completion of any evaluation, provide to the court of
27 record a written, signed report of his or her opinion on the issue of competency to stand trial. If it
28 is the qualified forensic evaluator's opinion that the defendant is not competent to stand trial, the
29 report shall state whether the defendant is substantially likely to attain competency within the next
30 three months and, in order to attain competency to stand trial, whether the defendant requires
31 inpatient management in a behavioral health facility. The court may extend the ten-day period for
32 filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no
33 event may the period exceed thirty days. If there are no objections by the state or defense counsel,
34 the court may, by order, dismiss the requirement for a written report if the qualified forensic
35 evaluator's opinion may otherwise be made known to the court and interested parties.

36 (d) If the court determines:

37 (1) The defendant has been uncooperative during the forensic evaluation ordered
38 pursuant to this section or;

39 (2) There have been one or more inadequate or conflicting forensic evaluations performed
40 pursuant to this section; and

41 (3) The court has reason to believe that an observation period is necessary in order to
42 determine if a person is competent to stand trial, the court may order the defendant be committed
43 to a behavioral health facility designated by the department for a period not to exceed fifteen days
44 and an additional evaluation be conducted in accordance with this section by one or more qualified
45 forensic psychiatrists, or a qualified forensic psychiatrist and a qualified forensic psychologist.

46 (e) The court shall order that at the conclusion of the fifteen-day observation period the

47 sheriff of the county where the defendant was charged shall take immediate custody of the
48 defendant for transportation and disposition as ordered by the court.

49 (f) A behavioral health facility not operated by the state is not obligated to admit and treat
50 a defendant pursuant to this section.

**§27-6-3. Competency of defendant to stand trial determination; preliminary finding;
hearing; evidence; disposition.**

1 (a) Within five days of the receipt of the qualified forensic evaluator's report and opinion
2 on the issue of competency to stand trial, the court of record shall make a preliminary finding on
3 the issue of whether the defendant is competent to stand trial and if not competent whether there
4 is a substantial likelihood that the defendant will attain competency within the next three months.
5 If the court of record orders, or if the state or defendant or defendant's counsel within twenty days
6 of receipt of the preliminary findings requests, a hearing, then a hearing shall be held by the court
7 of record within fifteen days of the date of the preliminary finding, absent good cause being shown
8 for a continuance. If a hearing order or request is not filed within twenty days, the preliminary
9 findings of the court become the final order.

10 (b) At a hearing to determine a defendant's competency to stand trial the defendant has
11 the right to be present and he or she has the right to be represented by counsel and introduce
12 evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate
13 notice of the issues at the hearing and shall have access to all forensic evaluator's opinions. All
14 rights generally afforded a defendant in criminal proceedings shall be afforded to a defendant in
15 the competency proceedings, except trial by jury.

16 (c) The court of record, pursuant to a preliminary finding or hearing on the issue of a
17 defendant's competency to stand trial, and with due consideration of any forensic evaluation
18 conducted pursuant to §27-6-2 and §27-6-3 of this code shall make a finding of fact upon a
19 preponderance of the evidence as to the defendant's competency to stand trial based on whether
20 or not the defendant has sufficient present ability to consult with his or her attorney with a

21 reasonable degree of rational understanding and whether he or she has a rational as well as a
22 factual understanding of the proceedings against him or her.

23 (d) If at any point in the proceedings the defendant is found competent to stand trial, the
24 court of record shall proceed with the criminal proceedings.

25 (e) If at any point in the proceedings the defendant is found not competent to stand trial,
26 the court of record shall at the same hearing, upon the evidence, make further findings as to
27 whether or not there is a substantial likelihood that the defendant will attain competency within
28 the next ensuing three months.

29 (f)(1) If at any point in the proceedings the defendant is found not competent to stand trial
30 and is found substantially likely to attain competency, the court of record shall in the same order,
31 upon the evidence, make further findings as to whether the defendant requires, in order to attain
32 competency, inpatient management in a behavioral health facility. If inpatient management is
33 required, the court shall order the defendant be committed to an inpatient behavioral health facility
34 designated by the department to attain competency to stand trial and for a competency evaluation.
35 The term of this commitment may not exceed three months from the time of entry into the facility.

36 (2) However, upon request by the chief medical officer of the behavioral health facility and
37 based on the requirement for additional management to attain competency to stand trial, the court
38 of record may, prior to the termination of the three-month period, extend the period up to nine
39 months from entry into the facility.

40 (3) A forensic evaluation of competency to stand trial shall be conducted by a qualified
41 forensic evaluator and a report rendered to the court, in like manner as §27-6-2(a) and §27-6-2(c)
42 of this code, every three months until the court determines the defendant is not competent to
43 stand trial and is not substantially likely to attain competency.

44 (g) If at any point in the proceedings the defendant is found not competent to stand trial
45 and is found not substantially likely to attain competency and if the defendant has been indicted
46 or charged with a misdemeanor, or felony which does not involve an act of violence against a

47 person, the criminal charges shall be dismissed. The dismissal order may, however, be stayed
48 for twenty days to allow civil commitment proceedings to be instituted by the prosecutor pursuant
49 to §27-16-1 et seq. of this code. The defendant shall be immediately released from any inpatient
50 facility unless civilly committed.

51 (h) If at any point in the proceedings the defendant is found not competent to stand trial
52 and is found not substantially likely to attain competency, and if the defendant has been indicted
53 or charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act
54 of violence against a person, then the court shall determine on the record the offense or offenses
55 of which the person otherwise would have been convicted, and the maximum sentence he or she
56 could have received. A defendant shall remain under the court's jurisdiction until the expiration of
57 the maximum sentence unless the defendant attains competency to stand trial and the criminal
58 charges reach resolution or the court dismisses the indictment or charge. The court shall order
59 the defendant be committed to a behavioral health facility designated by the department that is
60 the least restrictive environment to manage the defendant and that will allow for the protection of
61 the public. Notice of the maximum sentence period with an end date shall be provided to the
62 behavioral health facility. The court shall order a qualified forensic evaluator to conduct a
63 dangerousness evaluation to include dangerousness risk factors to be completed within thirty
64 days of admission to the behavioral health facility and a report rendered to the court within ten
65 business days of the completion of the evaluation. The medical director of the behavioral health
66 facility shall provide the court a written clinical summary report of the defendant's condition at
67 least annually during the time of the court's jurisdiction. The court's jurisdiction shall continue an
68 additional ten days beyond any expiration to allow civil commitment proceedings to be instituted
69 by the prosecutor pursuant to §27-16-1 et seq. of this code. The defendant shall then be
70 immediately released from the facility unless civilly committed.

71 (i) If the defendant has been ordered to a behavioral health facility pursuant to subsection
72 (h) of this section and the court receives notice from the medical director or other responsible

73 official of the behavioral health facility that the defendant no longer constitutes a significant danger
74 to self or others, the court shall conduct a hearing within thirty days to consider evidence, with
75 due consideration of the qualified forensic evaluator's dangerousness report or clinical summary
76 report to determine if the defendant shall be released to a less restrictive environment. The court
77 may order the release of the defendant only when the court finds that the defendant is no longer
78 a significant danger to self or others. When a defendant's dangerousness risk factors associated
79 with mental illness are reduced or eliminated as a result of any treatment, the court, in its
80 discretion, may make the continuance of appropriate treatment, including medications, a condition
81 of the defendant's release from inpatient hospitalization. The court shall maintain jurisdiction of
82 the defendant in accordance with said subsection. Upon notice that a defendant ordered to a
83 behavioral health facility pursuant to said subsection who is released on the condition that he or
84 she continues treatment does not continue his or her treatment, the prosecuting attorney shall,
85 by motion, cause the court to reconsider the defendant's release. Upon a showing that defendant
86 is in violation of the conditions of his or her release, the court shall reorder the defendant to a
87 behavioral health facility under the authority of the department which is the least restrictive setting
88 that will allow for the protection of the public.

89 (j) The prosecuting attorney may, by motion, and in due consideration of any chief medical
90 officer's or forensic evaluator's reports, cause the competency to stand trial of a defendant subject
91 to the court's jurisdiction pursuant to subsection (h) of this section or released pursuant to
92 subsection (i) of this section to be determined by the court of record while the defendant remains
93 under the jurisdiction of the court. The court may order a forensic evaluation of competency to
94 stand trial be conducted by a qualified forensic evaluator and a report rendered to the court in like
95 manner as §27-6-2(a) and §27-6-2(c) of this code.

96 (k) Any defendant found not competent to stand trial may at any time petition the court of
97 record for a hearing on his or her competency.

98 (l) Notice of court findings of a defendant's competency to stand trial, of commitment for

99 inpatient management to attain competency, of dismissal of charges, of order for inpatient
100 management to protect the public, of release or conditional release, or any hearings to be
101 conducted pursuant to this section shall be sent to the prosecuting attorney, the defendant and
102 his or her counsel, and the behavioral health facility. Notice of court release hearing or order for
103 release or conditional release pursuant to subsection (i) of this section shall be made available to
104 the victim or next of kin of the victim of the offense for which the defendant was charged. The
105 burden is on the victim or next of kin of the victim to keep the court apprised of that person's
106 current mailing address.

107 (m) A behavioral health facility not operated by the state is not obligated to admit or treat
108 a defendant pursuant this section.

**§27-6-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over
persons found not guilty by reason of mental illness.**

1 (a) If the court of record finds, upon hearing evidence or representations of counsel for the
2 defendant, that there is probable cause to believe that the defendant's criminal responsibility or
3 diminished capacity will be a significant factor in his or her defense, the court shall appoint one or
4 more qualified forensic psychiatrists or qualified forensic psychologists to conduct a forensic
5 evaluation of the defendant's state of mind at the time of the alleged offense. However, if a
6 qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial that
7 no criminal responsibility or diminished capacity evaluation may be conducted. The forensic
8 evaluation may not be conducted at a state inpatient behavioral health facility unless the
9 defendant has been ordered to a behavioral health facility in accordance with §27-6-2(c), or §27-
10 6-3(f) or §27-6-3(h) of this code. To the extent possible, qualified forensic evaluators who have
11 conducted evaluations of competency pursuant to §27-6-2(a) of this code shall be used to
12 evaluate criminal responsibility or diminished capacity under this subsection.

13 (b) The court shall require the party making the motion for the evaluations, and other
14 parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed

15 pursuant to subsection (a) of this section any information relevant to the evaluation within ten
16 business days of its evaluation order. The information shall include, but not be limited to:

17 (1) A copy of the warrant or indictment;

18 (2) Information pertaining to the alleged crime, including statements by the defendant
19 made to the police, investigative reports and transcripts of preliminary hearings, if any;

20 (3) Any available psychiatric, psychological, medical or social records that are considered
21 relevant;

22 (4) A copy of the defendant's criminal record; and

23 (5) If the evaluation is to include a diminished capacity assessment, the nature of any
24 lesser criminal offenses.

25 (c) A qualified forensic evaluator shall schedule and arrange within fifteen days of the
26 receipt of appropriate documents the completion of any court-ordered evaluation which may
27 include record review and defendant interview and shall, within ten business days of the date of
28 the completion of any evaluation, provide to the court of record a written, signed report of his or
29 her opinion on the issue of criminal responsibility and if ordered, on diminished capacity. The court
30 may extend the ten-day period for filing the report if a qualified forensic evaluator shows good
31 cause to extend the period, but in no event may the period exceed thirty days. If there are no
32 objections by the state or defense counsel, the court may, by order, dismiss the requirement for
33 a written report if the qualified forensic evaluator's opinion may otherwise be made known to the
34 court and interested parties.

35 (d) If the court determines that the defendant has been uncooperative during a forensic
36 evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting
37 forensic evaluations performed pursuant to subsection (a) of this section, and the court has
38 reason to believe that an observation period and additional forensic evaluation or evaluations are
39 necessary in order to determine if a defendant was criminally responsible or with diminished
40 capacity, the court may order the defendant be admitted to a behavioral health facility designated

41 by the department for a period not to exceed fifteen days and an additional evaluation be
42 conducted and a report rendered in like manner as subsections (a) and (b) of this section by one
43 or more qualified forensic psychiatrists or one or more qualified forensic psychologists. At the
44 conclusion of the observation period, the court shall enter a disposition order and the sheriff of
45 the county where the defendant was charged shall take immediate custody of the defendant for
46 transportation and disposition as ordered by the court.

47 (e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness,
48 the court shall determine on the record the offense or offenses of which the acquitee could have
49 otherwise been convicted, and the maximum sentence he or she could have received. The
50 acquitee shall remain under the court's jurisdiction until the expiration of the maximum sentence
51 or until discharged by the court. The court shall commit the acquitee to a behavioral health facility
52 designated by the department that is the least restrictive environment to manage the acquitee
53 and that will allow for the protection of the public. Notice of the maximum sentence period with
54 end date shall be provided to the behavioral health facility. The court shall order a qualified
55 forensic evaluator to conduct a dangerousness evaluation to include dangerousness risk factors
56 to be completed within thirty days of admission to the behavioral health facility and a report
57 rendered to the court within ten business days of the completion of the evaluation. The medical
58 director of the behavioral health facility shall provide the court a written clinical summary report of
59 the defendant's condition at least annually during the time of the court's jurisdiction. The court's
60 jurisdiction continues an additional ten days beyond any expiration to allow civil commitment
61 proceedings to be instituted by the prosecutor pursuant to §27-16-1 et seq. of this code. The
62 defendant shall then be immediately released from the facility unless civilly committed.

63 (f) In addition to any court-ordered evaluations completed pursuant to §27-6-2, §27-6-3 or
64 §27-6-4 of this code, the defendant or the state has the right to an evaluation or evaluations by a
65 forensic evaluator or evaluators of his or her choice and at his or her expense.

66 (g) A behavioral health facility not operated by the state is not required to admit or treat a

67 defendant or acquitee pursuant this section.

§27-6-5. Release of acquitee to less restrictive environment; discharge from jurisdiction of the court.

1 (a) If, at any time prior to the expiration of the court's jurisdiction, the chief medical officer
2 or responsible official of the behavioral health facility to which an acquitee has been ordered
3 pursuant to §27-6-4(e) of this code believes that the acquitee is not mentally ill or does not have
4 significant dangerousness risk factors associated with mental illness, he or she shall file with the
5 court of record notice of the belief and shall submit evidence in support of the belief. This report
6 shall include a forensic evaluation dangerousness report conducted in like manner as said
7 subsection and recommendations for treatment, including medications, that reduce or eliminate
8 the dangerousness risk factors associated with mental illness. The court of record shall hold a
9 hearing within thirty days of receipt of the notice to consider evidence as to whether the acquitee
10 shall be released from the behavioral health facility to a less restrictive environment. Notice of the
11 hearing shall be made available to the prosecuting attorney responsible for the charges brought
12 against the acquitee at trial, the acquitee and his or her counsel and the behavioral health facility.
13 If upon consideration of the evidence the court determines that an acquitee may be released from
14 a behavioral health facility to a less restrictive setting, the court shall order, within fifteen days of
15 the hearing, the acquitee be released upon terms and conditions, if any, the court considers
16 appropriate for the safety of the community and the well-being of the acquitee. Any terms and
17 conditions imposed by the court must be protective and therapeutic in nature, not punitive. When
18 a defendant's dangerousness risk factors associated with mental illness are reduced or eliminated
19 as a result of any treatment, the court, in its discretion, may make the continuance of appropriate
20 treatment, including medications, a condition of the defendant's release from inpatient
21 hospitalization. The court shall maintain jurisdiction of the defendant in accordance with said
22 subsection. Upon notice that an acquitee released on the condition that he or she continues
23 appropriate treatment does not continue his or her treatment, the prosecuting attorney responsible

24 for the charges brought against the acquitee at trial shall, by motion, cause the court to reconsider
25 the acquitee's release. Upon a showing that the acquitee is in violation of the conditions of his or
26 her release, the court may reorder the acquitee to a behavioral health facility designated by the
27 department which is the least restrictive setting appropriate to manage the acquitee and protect
28 the public.

29 (b) No later than thirty days prior to the release from a behavioral health facility or other
30 management setting of an acquitee because of the expiration of the court's jurisdiction as set in
31 accordance with §27-6-4(e) of this code, if the acquitee's physician, psychologist, chief medical
32 officer or other responsible party is of the opinion that the acquitee's mental illness renders the
33 acquitee to be likely to cause serious harm to self or others, the supervising physician,
34 psychologist, chief medical officer or other responsible party shall notify the court of record who
35 shall promptly notify the prosecuting attorney in the county of the court having jurisdiction of the
36 opinion and the basis for the opinion. Following notification, the prosecuting attorney may file,
37 within ten days, a civil commitment application against the acquitee pursuant to §27-16-1 et seq.
38 of this code.

§27-6-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

1 If a defendant who has been found to be not competent to stand trial believes that he or
2 she can establish a defense of not guilty to the charges pending against him or her, other than
3 the defense of not guilty by reason of mental illness, the defendant may request an opportunity to
4 offer a defense thereto on the merits before the court which has criminal jurisdiction. If the
5 defendant is unable to obtain legal counsel, the court of record shall appoint counsel for the
6 defendant to assist him or her in supporting the request by affidavit or other evidence. If the court
7 of record in its discretion grants such a request, the evidence of the defendant and of the state
8 shall be heard by the court of record sitting without a jury. If after hearing such petition the court
9 of record finds insufficient evidence to support a conviction, it shall dismiss the indictment and

10 order the release of the defendant from criminal custody. The release order, however, may be
11 stayed for ten days to allow civil commitment proceedings to be instituted by the prosecutor
12 pursuant to §27-16-1 et seq. of this code. A defendant committed to a behavioral health facility
13 pursuant to §27-6-3(f) or §27-6-3(h), of this code shall be immediately released from the facility
14 unless civilly committed.

§27-6-7. Release of defendant during course of criminal proceedings.

1 Notwithstanding any finding of incompetence to stand trial pursuant to the provisions of
2 this article, the court of record may at any stage of the criminal proceedings allow a defendant to
3 be released with or without bail.

§27-6-8. Credit for time; expenses.

1 (a) If a person is convicted of a crime, any time spent in involuntary confinement in a
2 behavioral health facility as a result of being charged with the crime shall be credited to the
3 sentence.

4 (b) All inpatient care and treatment shall be paid by the department.

§27-6-9. Competency to be adjudicated in juvenile court.

1 In a similar manner and in accordance with procedures set forth in §27-6-2(a) or §27-6-
2 4(a), a juvenile court may order a qualified forensic evaluator to conduct an evaluation of a juvenile
3 to aid the court in its disposition pursuant to chapter 49 of this code. In a similar manner and in
4 accordance with procedures set forth in §27-6-2(d) or §27-6-4(d) of this code a juvenile court may
5 order a period of observation for an alleged delinquent or neglected juvenile at a behavioral health
6 facility designated by the department to aid the court in its disposition. The period of observation
7 may not exceed fifteen days.

§27-6-10. Medications and management of court-ordered individuals.

1 (a) At any time pursuant to §27-6-2, §27-6-3 or §27-6-4 of this code an individual is court
2 ordered to a behavioral health facility, the individual has the right to receive treatment under the
3 standards of medical management.

4 (b) An individual with health care decision-making capacity may refuse medications or
 5 other management unless court-ordered to be treated or unless a treating clinician determines
 6 that medication or other management is necessary in emergencies or to prevent danger to the
 7 individual or others.

§27-6-11. Payment to forensic evaluators.

1 The department shall pay qualified forensic evaluators for all matters related to conducting
 2 a court-ordered forensic evaluation. The department shall develop and implement a process for
 3 prompt payment to qualified forensic evaluators. The department shall establish policies and
 4 procedures for establishing a maximum rate schedule for each of the four evaluation types
 5 (competency to stand trial, criminal responsibility, diminished capacity, dangerousness) to include
 6 all efforts towards the completion of each evaluation such as scheduling and administrative tasks,
 7 record review, psychological and other testing, interviews, report writing, research, preparation
 8 and consultation. Such policies and procedures shall include input from provider representatives
 9 as necessary and appropriate. Any rate schedule shall be fair and reasonable. The department
 10 shall consider requests for payment in excess of established rates or other expenses for good
 11 cause shown.

ARTICLE 7. INTERSTATE COMPACT ON MENTAL HEALTH.

§27-7-1. Governor to execute compact.

1 The Governor of this state is hereby authorized and directed to execute a compact on
 2 behalf of the State of West Virginia with any state or states of the United States legally joining
 3 therein in form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

5 The contracting states solemnly agree that:

6 ARTICLE I

7 The party states find that the proper and expeditious treatment of the mentally ill and

8 mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their
9 families, and society as a whole. Further, the party states find that the necessity of and desirability
10 for furnishing such care and treatment bears no primary relation to the residence or citizenship of
11 the patient but that, on the contrary, the controlling factors of community safety and
12 humanitarianism require that facilities and services be made available for all who are in need of
13 them. Consequently, it is the purpose of this compact and of the party states to provide the
14 necessary legal basis for the institutionalization or other appropriate care and treatment of the
15 mentally ill and mentally deficient under a system that recognizes the paramount importance of
16 patient welfare and to establish the responsibilities of the party states in terms of such welfare.

17 ARTICLE II

18 As used in this compact:

19 (a) "Sending state" means a party state from which a patient is transported pursuant to
20 the provisions of the compact or from which it is contemplated that a patient may be so sent.

21 (b) "Receiving state" means a party state to which a patient is transported pursuant to the
22 provisions of the compact or to which it is contemplated that a patient may be so sent.

23 (c) "Institution" means any hospital or other facility maintained by a party state or political
24 subdivision thereof for the care and treatment of mental illness or mental deficiency.

25 (d) "Patient" means any person subject to or eligible as determined by the laws of the
26 sending state, for institutionalization or other care, treatment, or supervision pursuant to the
27 provisions of this compact.

28 (e) "Aftercare" means care, treatment and services provided a patient, as defined herein,
29 on convalescent status or conditional release.

30 (f) "Mental illness" means mental disease to such extent that a person so afflicted requires
31 care and treatment for his or her own welfare, or the welfare of others, or of the community.

32 (g) "Mental deficiency" means mental deficiency as defined by appropriate clinical
33 authority to such extent that a person so afflicted is incapable of managing himself or herself and

34 his or her affairs, but shall not include mental illness as defined herein.

35 (h) "State" means any state, territory or possession of the United States, the District of
36 Columbia, and the Commonwealth of Puerto Rico.

37 ARTICLE III

38 (a) Whenever a person physically present in any party state shall be in need of
39 institutionalization by reason of mental illness or mental deficiency, he or she shall be eligible for
40 care and treatment in an institution in that state irrespective of his or her residence, settlement or
41 citizenship qualifications.

42 (b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any
43 patient may be transferred to an institution in another state whenever there are factors based
44 upon clinical determinations indicating that the care and treatment of said patient would be
45 facilitated or improved thereby. Any such institutionalization may be for the entire period of care
46 and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall
47 include the patient's full record with due regard for the location of the patient's family, character
48 of the illness and probable duration thereof, and such other factors as shall be considered
49 appropriate.

50 (c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph
51 (b) of this article unless the sending state has given advance notice of its intention to send the
52 patient; furnished all available medical and other pertinent records concerning the patient; given
53 the qualified medical or other appropriate clinical authorities of the receiving state an opportunity
54 to examine the patient if said authorities so wish; and unless the receiving state shall agree to
55 accept the patient.

56 (d) In the event that the laws of the receiving state establish a system of priorities for the
57 admission of patients, an interstate patient under this compact shall receive the same priority as
58 a local patient and shall be taken in the same order and at the same time that he or she would be
59 taken if he or she were a local patient.

60 (e) Pursuant to this compact, the determination as to the suitable place of
61 institutionalization for a patient may be reviewed at any time and such further transfer of the
62 patient may be made as seems likely to be in the best interest of the patient.

63 ARTICLE IV

64 (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it
65 shall be determined that the patient should receive aftercare or supervision, such care or
66 supervision may be provided in a receiving state. If the medical or other appropriate clinical
67 authorities having responsibility for the care and treatment of the patient in the sending state shall
68 have reason to believe that aftercare in another state would be in the best interest of the patient
69 and would not jeopardize the public safety, they shall request the appropriate authorities in the
70 receiving state to investigate the desirability of affording the patient such aftercare in said
71 receiving state, and such investigation shall be made with all reasonable speed. The request for
72 investigation shall be accompanied by complete information concerning the patient's intended
73 place of residence and the identity of the person in whose charge it is proposed to place the
74 patient, the complete medical history of the patient, and such other documents as may be
75 pertinent.

76 (b) If the medical or other appropriate clinical authorities having responsibility for the care
77 and treatment of the patient in the sending state and the appropriate authorities in the receiving
78 state find that the best interest of the patient would be served thereby, and if the public safety
79 would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving
80 state.

81 (c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this
82 article, a receiving state shall employ the same standards of visitation, examination, care, and
83 treatment that it employs for similar local patients.

84 ARTICLE V

85 Whenever a dangerous or potentially dangerous patient escapes from an institution in any

86 party state, that state shall promptly notify all appropriate authorities within and without the
87 jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension
88 of the escapee. Immediately upon the apprehension and identification of any such dangerous or
89 potentially dangerous patient, he or she shall be detained in the state where found pending
90 disposition in accordance with law.

91 ARTICLE VI

92 The duly accredited officers of any state party to this compact, upon the establishment of
93 their authority and the identity of the patient, shall be permitted to transport any patient being
94 moved pursuant to this compact through any and all states party to this compact, without
95 interference.

96 ARTICLE VII

97 (a) No person shall be deemed a patient of more than one institution at any given time.
98 Completion of transfer of any patient to an institution in a receiving state shall have the effect of
99 making the person a patient of the institution in the receiving state.

100 (b) The sending state shall pay all costs of an incidental to the transportation of any patient
101 pursuant to this compact, but any two or more party states may, by making a specific agreement
102 for that purpose, arrange for a different allocation of costs as among themselves.

103 (c) No provision of this compact shall be construed to alter or affect any internal
104 relationships among the departments, agencies and officers of and in the government of a party
105 state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities
106 therefor.

107 (d) Nothing in this compact shall be construed to prevent any party state or subdivision
108 thereof from asserting any right against any person, agency or other entity in regard to costs for
109 which such party state or subdivision thereof may be responsible pursuant to any provision of this
110 compact.

111 (e) Nothing in this compact shall be construed to invalidate any reciprocal agreement

112 between a party state and a nonparty state relating to institutionalization, care or treatment of the
113 mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements
114 may be made.

115 ARTICLE VIII

116 (a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair
117 the rights, duties, and responsibilities of any patient's guardian on his or her own behalf or in
118 respect of any patient for whom he or she may serve, except that where the transfer of any patient
119 to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian,
120 any court of competent jurisdiction in the receiving state may make such supplemental or
121 substitute appointment and the court which appointed the previous guardian shall upon being duly
122 advised of the new appointment, and upon the satisfactory completion of such accounting and
123 other acts as such court may by law require, relieve the previous guardian of power and
124 responsibility to whatever extent shall be appropriate in the circumstances: *Provided, however,*
125 That in the case of any patient having settlement in the sending state, the court of competent
126 jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by
127 it or continue his or her power and responsibility, whichever it shall deem advisable. The court in
128 the receiving state may, in its discretion, confirm or reappoint the person or persons previously
129 servng as guardian in the sending state in lieu of making a supplemental or substitute
130 appointment.

131 (b) The term "guardian" as used in paragraph (a) of this article shall include any guardian,
132 trustee, legal committee, conservator, or other person or agency however denominated who is
133 charged by law with power to act for or responsibility for the person or property of a patient.

134 ARTICLE IX

135 (a) No provision of this compact except article V shall apply to any person institutionalized
136 while under sentence in a penal or correctional institution or while subject to trial on a criminal
137 charge, or whose institutionalization is due to the commission of an offense for which, in the

138 absence of mental illness or mental deficiency, said person would be subject to incarceration in
139 a penal or correctional institution.

140 (b) To every extent possible, it shall be the policy of states party to this compact that no
141 patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all
142 expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

143 ARTICLE X

144 (a) Each party state shall appoint a "compact administrator" who, on behalf of his or her
145 state, shall act as general coordinator of activities under the compact in his or her state and who
146 shall receive copies of all reports, correspondence, and other documents relating to any patient
147 processed under the compact by his or her state either in the capacity of sending or receiving
148 state. The compact administrator or his or her duly designated representative shall be the official
149 with whom other party states shall deal in any matter relating to the compact or any patient
150 processed thereunder.

151 (b) The compact administrators of the respective party states shall have power to
152 promulgate reasonable rules and regulations to carry out more effectively the terms and
153 provisions of this compact.

154 ARTICLE XI

155 The duly constituted administrative authorities of any two or more party states may enter
156 into supplementary agreements for the provision of any service or facility or for the maintenance
157 of any institution on a joint or cooperative basis whenever the states concerned shall find that
158 such agreements will improve services, facilities, or institutional care and treatment in the fields
159 of mental illness or mental deficiency. No such supplementary agreement shall be construed so
160 as to relieve any party state of any obligation which it otherwise would have under other provisions
161 of this compact.

162 ARTICLE XII

163 This compact shall enter into full force and effect as to any state when enacted by it into

164 law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

165 ARTICLE XIII

166 (a) A state party to this compact may withdraw therefrom by enacting a statute repealing
167 the same. Such withdrawal shall take effect one year after notice thereof has been communicated
168 officially and in writing to the Governors and compact administrators of all other party states.
169 However, the withdrawal of any state shall not change the status of any patient who has been
170 sent to said state or sent out of said state pursuant to the provisions of the compact.

171 (b) Withdrawal from any agreement permitted by article VII (b) as to costs or from any
172 supplementary agreement made pursuant to article XI shall be in accordance with the terms of
173 such agreement.

174 ARTICLE XIV

175 This compact shall be liberally construed so as to effectuate the purposes thereof. The
176 provisions of this compact shall be severable and if any phrase, clause, sentence or provision of
177 this compact is declared to be contrary to the Constitution of any party state or of the United
178 States or the applicability thereof to any government, agency, person or circumstance is held
179 invalid, the validity of the remainder of this compact and the applicability thereof to any
180 government, agency, person or circumstance shall not be affected thereby. If this compact shall
181 be held contrary to the Constitution of any state party thereto, the compact shall remain in full
182 force and effect as to the remaining states and in full force and effect as to the state affected as
183 to all severable matters.

§27-7-2. Compact administrator.

1 The commissioner shall be the compact administrator and, acting jointly with like officers
2 of other party states, shall have power to promulgate rules and regulations to carry out more
3 effectively the terms of the compact. The compact administrator is hereby authorized, empowered
4 and directed to cooperate with all departments, agencies and officers of and in the government
5 of this state and its subdivisions in facilitating the proper administration of the compact or of any

6 supplementary agreement or agreements entered into by this state thereunder.

§27-7-3. Supplementary agreements.

1 The compact administrator is hereby authorized and empowered to enter into
2 supplementary agreements with appropriate officials of other states pursuant to articles VII and
3 XI of the compact. In the event that any such supplementary agreements shall require or
4 contemplate the use of any institution or facility of this state or require or contemplate the provision
5 of any service by this state, no such agreement shall have force or effect until approved by the
6 head of the department or agency under whose jurisdiction said institution or facility is operated
7 or whose department or agency will be charged with the rendering of such service.

§27-7-4. Financial arrangements.

1 The compact administrator, subject to the approval of the State Auditor, may make or
2 arrange for any payments necessary to discharge any financial obligations imposed upon this
3 state by the compact or by any supplementary agreement entered into thereunder.

§27-7-5. Transmittal of copies of article.

1 Duly authenticated copies of this article shall, upon its approval, be transmitted by the
2 Secretary of State to the Governor of each state, the Attorney General and the Secretary of State
3 of the United States, and the council of state governments.

ARTICLE 8. INTERSTATE COMPACT ON THE MENTALLY DISORDERED
OFFENDER.

§27-8-1. Enactment of compact.

1 The Interstate Compact on the Mentally Disordered Offender, hereinafter called "the
2 compact," is hereby ratified, enacted into law and entered into with all jurisdictions legally joining
3 therein, in the form substantially as follows:

4 Interstate Compact on the Mentally
5 Disordered Offender

6 Article I. Purpose and Policy.

7 (a) The party states, desiring by common action to improve their programs for the care
8 and treatment of mentally disordered offenders, declare that it is the policy of each of the party
9 states to:

10 (1) Strengthen their own programs and laws for the care and treatment of the mentally
11 disordered offender.

12 (2) Encourage and provide for such care and treatment in the most appropriate locations,
13 giving due recognition to the need to achieve adequacy of diagnosis, care, treatment, aftercare
14 and auxiliary services and facilities and, to every extent practicable, to do so in geographic
15 locations convenient for providing a therapeutic environment.

16 (3) Authorize cooperation among the party states in providing services and facilities, when
17 it is found that cooperative programs can be more effective and efficient than programs separately
18 pursued.

19 (4) Place each mentally disordered offender in a legal status which will facilitate his or her
20 care, treatment and rehabilitation.

21 (5) Authorize research and training of personnel on a cooperative basis, in order to
22 improve the quality or quantity of personnel available for the proper staffing of programs, services
23 and facilities for mentally disordered offenders.

24 (6) Care for and treat mentally disordered offenders under conditions which will improve
25 the public safety.

26 (b) Within the policies set forth in this article, it is the purpose of this compact to:

27 (1) Authorize negotiation, entry into, and operations under contractual arrangements
28 among any two or more of the party states for the establishment and maintenance of cooperative
29 programs in any one or more of the fields for which specific provision is made in the several
30 articles of this compact.

31 (2) Set the limits within which such contracts may operate, so as to assure protection of

32 the civil rights of mentally disordered offenders and protection of the rights and obligations of the
33 public and of the party states.

34 (3) Facilitate the proper disposition of criminal charges pending against mentally
35 disordered offenders, so that programs for their care, treatment and rehabilitation may be carried
36 on efficiently.

37 Article II. Definitions.

38 As used in this compact:

39 (a) "Mentally disordered offender" means a person who has been determined, by
40 adjudication or other method legally sufficient for the purpose in the party state where the
41 determination is made, to be mentally ill and:

42 (1) Is under sentence for the commission of crime; or

43 (2) Who is confined or committed on account of the commission of an offense for which,
44 in the absence of mental illness, said person would be subject to incarceration in a penal or
45 correctional facility.

46 (b) "Patient" means a mentally disordered offender who is cared for, treated, or transferred
47 pursuant to this compact.

48 (c) "Sending state" means a state party to this compact in which the mentally disordered
49 offender was convicted; or the state in which he or she would be subject to trial on or conviction
50 of an offense, except for his or her mental condition; or, within the meaning of Article V of this
51 compact, the state whose authorities have filed a petition in connection with an untried indictment,
52 information or complaint.

53 (d) "Receiving state" means a state party to this compact to which a mentally disordered
54 offender is sent for care, aftercare, treatment or rehabilitation, or within the meaning of Article V
55 of this compact, the state in which a petition in connection with an untried indictment, information
56 or complaint has been filed.

57 Article III. Contracts.

58 (a) Each party state may make one or more contracts with any one or more of the other
59 party states for the care and treatment of mentally disordered offenders on behalf of a sending
60 state in facilities situated in receiving states, or for the participation of such mentally disordered
61 offenders in programs of aftercare on conditional release administered by the receiving state. Any
62 such contract shall provide for:

63 (1) Its duration.

64 (2) Payments to be made to the receiving state by the sending state for patient care,
65 treatment and extraordinary services, if any.

66 (3) Determination of responsibility for ordering or permitting the furnishing of extraordinary
67 services, if any.

68 (4) Participation in compensated activities, if any, available to patients; the disposition or
69 crediting of any payment received by patients on account thereof; and the crediting of proceeds
70 from or disposal of any products resulting therefrom.

71 (5) Delivery and retaking of mentally disordered offenders.

72 (6) Such other matters as may be necessary and appropriate to fix the obligations,
73 responsibilities and rights of the sending and receiving states.

74 (b) Prior to the construction or completion of construction of any facility for mentally
75 disordered offenders or addition to such facility by a party state, any other party state or states
76 may contract therewith for the enlargement of the planned capacity of the facility or addition
77 thereto, or for the inclusion therein of particular equipment or structures, and for the reservation
78 of a specific per centum of the capacity of the facility to be kept available for use by patients of
79 the sending state or states so contracting. Any sending state so contracting may, to the extent
80 that moneys are legally available therefor, pay to the receiving state, a reasonable sum as
81 consideration for such enlargement of capacity, or provision of equipment or structures, and
82 reservation of capacity. Such payment may be in a lump sum or in installments as provided in the
83 contract.

84 (c) A party state may contract with any one or more other party states for the training of
85 professional or other personnel whose services, by reason of such training, would become
86 available for or be improved in respect of ability to participate in the care and treatment of mentally
87 disordered offenders. Such contracts may provide for such training to take place at any facility
88 being operated or to be operated for the care and treatment of mentally disordered offenders; at
89 any institution or facility having resources suitable for the offering of such training; or may provide
90 for the separate establishment of training facilities: *Provided*, That no such separate
91 establishment shall be undertaken, unless it is determined that an appropriate existing facility or
92 institution cannot be found at which to conduct the contemplated program. Any contract entered
93 into pursuant to this paragraph shall provide for:

94 (1) The administration, financing and precise nature of the program.

95 (2) The status and employment or other rights of the trainees.

96 (3) All other necessary matters.

97 (d) No contract entered into pursuant to this compact shall be inconsistent with any
98 provision thereof.

99 Article IV. Procedures and Rights.

100 (a) Whenever the duly constituted judicial or administrative authorities in a state party to
101 this compact, and which has entered into a contract pursuant to Article III, shall decide that
102 custody, care and treatment in, or transfer of a patient to, a facility within the territory of another
103 party state, or conditional release for aftercare in another party state is necessary in order to
104 provide adequate care and treatment or is desirable in order to provide an appropriate program
105 of therapy or other treatment, or is desirable for clinical reasons, said officials may direct that the
106 custody, care and treatment be within a facility or in a program of aftercare within the territory of
107 said other party state, the receiving state to act in that regard solely as agent for the sending state.

108 (b) The appropriate officials of any state party to this compact shall have access, at all
109 reasonable times, to any facility in which it has a contractual right to secure care or treatment of

110 patients for the purpose of inspection and visiting such of its patients as may be in the facility or
111 served by it.

112 (c) Except as otherwise provided in Article VI, patients in a facility pursuant to the terms
113 of this compact shall at all times be subject to the jurisdiction of the sending state and may at any
114 time be removed for transfer to a facility within the sending state, for transfer to another facility in
115 which the sending state may have a contractual or other right to secure care and treatment of
116 patients, for release on aftercare or other conditional status, for discharge, or for any other
117 purpose permitted by the laws of the sending state: *Provided*, That the sending state shall
118 continue to be obligated to such payments as may be required pursuant to the terms of any
119 contract entered into under the terms of Article III.

120 (d) Each receiving state shall provide regular reports to each sending state on the patients
121 of that sending state in facilities pursuant to this compact including a psychiatric and behavioral
122 record of each patient and certify said record to the official designated by the sending state, in
123 order that each patient may have the benefit of his or her record in determining and altering the
124 disposition of said patient in accordance with the law which may obtain in the sending state and
125 in order that the same may be a source of information for the sending state.

126 (e) All patients who may be in a facility or receiving aftercare from a facility pursuant to the
127 provisions of this compact shall be treated in a reasonable and humane manner and shall be
128 cared for, treated and supervised in accordance with the standards pertaining to the program
129 administered at the facility. The fact of presence in a receiving state shall not deprive any patient
130 of any legal rights which said patient would have had if in custody or receiving care, treatment or
131 supervision as appropriate in the sending state.

132 (f) Any hearing or hearings to which a patient present in a receiving state pursuant to this
133 compact may be entitled by the laws of the sending state shall be had before the appropriate
134 authorities of the sending state, or of the receiving state if authorized by the sending state. The
135 receiving state shall provide adequate facilities for such hearings as may be conducted by the

136 appropriate officials of a sending state. In the event such hearing or hearings are had before
137 officials of the receiving state, the governing law shall be that of the sending state and a record of
138 the hearing or hearings as prescribed by the sending state shall be made. Said record together
139 with any recommendations of the hearing officials shall be transmitted forthwith to the official or
140 officials before whom the hearing would have been had if it had taken place in the sending state.
141 In any and all proceedings had pursuant to the provisions of this paragraph, the officials of the
142 receiving state shall act solely as agents of the sending state and no final determination shall be
143 made in any matter except by the appropriate officials of the sending state. Costs of records made
144 pursuant to this paragraph shall be borne by the sending state.

145 (g) Any patient confined pursuant to this compact shall be released within the territory of
146 the sending state unless the patient, and the sending and receiving states, shall agree upon
147 release in some other place. The sending state shall bear the cost of such return to its territory.

148 (h) Any patient pursuant to the terms of this compact shall be subject to civil process and
149 shall have any and all rights to sue, be sued and participate in and derive any benefits or incur or
150 be relieved of any obligations or have such obligations modified or his or her status changed on
151 account of any action or proceeding in which he or she could have participated if in any
152 appropriate facility of the sending state or being supervised therefrom, as the case may be,
153 located within such state.

154 (i) The parent, guardian, trustee, or other person or persons entitled under the laws of the
155 sending state to act for, advise, or otherwise function with respect to any patient shall not be
156 deprived of or restricted in his or her exercise of any power in respect of any patient pursuant to
157 the terms of this compact.

158 Article V. Disposition of Charges.

159 (a) Whenever the authorities responsible for the care and treatment of a mentally
160 disordered offender, whether convicted or adjudicated in the state or subject to care, aftercare,
161 treatment or rehabilitation pursuant to a contract, are of the opinion that charges based on untried

162 indictments, informations or complaints in another party state present obstacles to the proper care
163 and treatment of a mentally disordered offender or to the planning or execution of a suitable
164 program for him or her, such authorities may petition the appropriate court in the state where the
165 untried indictment, information or complaint is pending for prompt disposition thereof. If the
166 mentally disordered offender is a patient in a receiving state, the appropriate authorities of the
167 sending state, upon recommendation of the appropriate authorities in the receiving state, shall, if
168 they concur in the recommendation, file the petition contemplated by this paragraph.

169 (b) The court shall hold a hearing on the petition within thirty days of the filing thereof.
170 Such hearing shall be only to determine whether the proper safeguarding and advancement of
171 the public interest; the condition of the mentally disordered offender; and the prospects for more
172 satisfactory care, treatment and rehabilitation of him or her warrant disposition of the untried
173 indictment, information or complaint prior to termination of the defendant's status as a mentally
174 disordered offender in the sending state. The prosecuting officer of the jurisdiction from which the
175 untried indictment, information or complaint is pending, the petitioning authorities, and such other
176 persons as the court may determine shall be entitled to be heard.

177 (c) Upon any hearing pursuant to this article, the court may order such adjournments or
178 continuances as may be necessary for the examination or observation of the mentally disordered
179 offender or for the securing of necessary evidence. In granting or denying any such adjournment
180 or continuance, the court shall give primary consideration to the purposes of this compact, and
181 more particularly to the need for expeditious determination of the legal and mental status of a
182 mentally disordered offender so that his or her care, treatment and discharge to the community
183 only under conditions which will be consonant with the public safety may be implemented.

184 (d) The presence of a mentally disordered offender within a state wherein a petition is
185 pending or being heard pursuant to this article, or his or her presence within any other state
186 through which he or she is being transported in connection with such petition or hearing, shall be
187 only for the purposes of this compact, and no court, agency or person shall have or obtain

188 jurisdiction over such mentally disordered offender for any other purpose by reason of his or her
189 presence pursuant to this article. The mentally disordered offender shall, at all times, remain in
190 the custody of the sending state. Any acts of officers, employees, or agencies of the receiving
191 state in providing or facilitating detention, housing or transportation for the mentally disordered
192 offender shall be only as agents for the sending state.

193 (e) Promptly upon conclusion of the hearing the court shall dismiss the untried indictment,
194 information or complaint, if it finds that the purposes enumerated in paragraph (b) of this article
195 would be served thereby. Otherwise, the court shall make such order with respect to the petition
196 and the untried indictment, information or complaint as may be appropriate in the circumstances
197 and consistent with the status of the defendant as a mentally disordered offender in the custody
198 of and subject to the jurisdiction of the sending state.

199 (f) No fact or other matter established or adjudicated at any hearing pursuant to this article,
200 or in connection therewith, shall be deemed established or adjudicated, nor shall the same be
201 admissible in evidence, in any subsequent prosecution of the untried indictment, information or
202 complaint concerned in a petition filed pursuant to this article unless:

203 (1) The defendant or his or her duly empowered legal representative requested or
204 expressly acquiesced in the making of the petition, and was afforded an opportunity to participate
205 in person in the hearing; or

206 (2) The defendant himself or herself offers or consents to the introduction of the
207 determination or adjudication at such subsequent proceedings.

208 Article VI. Acts Not Reviewable in Receiving
209 State; Return.

210 (a) Any decision of the sending state in respect of any matter over which it retains
211 jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the
212 receiving state, but if at the time the sending state seeks to remove a patient from the receiving
213 state there is pending against the patient within such state any criminal charge or if the patient is

214 suspected of having committed within such state a criminal offense, the patient shall not be
215 returned without the consent of the receiving state until discharged from prosecution or other form
216 of proceeding, imprisonment or detention for such offense. The duly accredited officers of the
217 sending state shall be permitted to transport patients pursuant to this compact through any and
218 all states party to this compact without interference.

219 (b) A patient who escapes while receiving care and treatment or who violates provisions
220 of aftercare by leaving the jurisdiction, or while being detained or transported pursuant to this
221 compact shall be deemed an escapee from the sending state and from the state in which the
222 facility is situated or the aftercare was being provided. In the case of an escape to a jurisdiction
223 other than the sending or receiving state, the responsibility for return shall be that of the sending
224 state, but nothing contained herein shall be construed to prevent or affect the activities of officers
225 and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

226 Article VII. Federal Aid.

227 Any state party to this compact may accept federal aid for use in connection with any
228 facility or program, the use of which is or may be affected by this compact or any contract pursuant
229 thereto and any patient in a receiving state pursuant to this compact may participate in any such
230 federally aided program or activity for which the sending and receiving states have made
231 contractual provision: *Provided*, That if such program or activity is not part of the customary
232 regimen of the facility or program the express consent of the appropriate official of the sending
233 state shall be required therefor.

234 Article VIII. Entry into Force.

235 This compact shall enter into force and become effective and binding upon the states so
236 acting when it has been enacted into law by any two states from among the states of Illinois,
237 Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South
238 Dakota and Wisconsin. Thereafter, this compact shall enter into force and become effective and
239 binding as to any other of said states, or any other state upon similar action by such state.

240 Article IX. Withdrawal and Termination.

241 This compact shall continue in force and remain binding upon a party state until it shall
242 have enacted a statute repealing the same and providing for the sending of formal written notice
243 of withdrawal from the compact to the appropriate officials of all other party states. An actual
244 withdrawal shall not take effect until two years after the notices provided in said statute have been
245 sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed
246 hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a
247 withdrawing state shall remove to its territory, at its own expense, such patients as it may have in
248 other party states pursuant to the provisions of this compact.

249 Article X. Other Arrangements Unaffected.

250 Nothing contained in this compact shall be construed to abrogate or impair any agreement
251 or other arrangement which a party state may have with a nonparty state for the custody, care,
252 treatment, rehabilitation or aftercare of patients nor to repeal any other laws of a party state
253 authorizing the making of cooperative arrangements.

254 Article XI. Construction and Severability.

255 The provisions of this compact shall be liberally construed and shall be severable. If any
256 phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution
257 of any participating state or of the United States or the applicability thereof to any government,
258 agency, person or circumstance is held invalid, the validity of the remainder of this compact and
259 the applicability thereof to any government, agency, person or circumstance shall not be affected
260 thereby. If this compact shall be held contrary to the Constitution of any state participating therein,
261 the compact shall remain in full force and effect as to the remaining states and in full force and
262 effect as to the state affected as to all severable matters.

§27-8-2. Who may enter into contracts under compact.

1 The Governor, the State Board of Education, the Division of Rehabilitative Services, the
2 Higher Education Policy Commission, the West Virginia Board of Regents, the Department of

3 Military and Public Safety, the Department of Health and Compliance and the West Virginia
4 Division of Probation Services may negotiate and enter into contracts on behalf of this state
5 pursuant to Article III of the compact and may perform such contracts: *Provided*, That no funds,
6 personnel, facilities, equipment, supplies or materials shall be pledged for, committed or used on
7 account of any such contract, unless legally available therefor.

§27-8-3. Effective date.

1 The effective date of this article shall be July 1, 1970.

ARTICLE 9. MISCELLANEOUS PROVISIONS RELATED TO BEHAVIORAL HEALTH.

§27-9-1. Independent Informal Dispute Resolution.

1 (a) A behavioral health provider licensed by the department adversely affected by an order
2 or citation of a deficient practice issued pursuant to this article or pursuant to federal law may
3 request to use the independent informal dispute resolution process established by this section. A
4 licensee may contest a cited deficiency as contrary to rule, regulation or law or unwarranted by
5 the facts, or any combination thereof.

6 (b) The independent informal dispute resolution process is not a formal evidentiary
7 proceeding and utilization of the independent informal dispute resolution process does not waive
8 the right of the licensee to request a formal hearing with the secretary.

9 (c) The independent informal dispute resolution process shall consist of the following:

10 (1) The secretary shall transmit to the licensee a statement of deficiencies attributed to the
11 licensee and request that the licensee submit a plan of correction addressing the cited
12 deficiencies no later than ten working days following the last day of the survey or inspection, or
13 no later than ten working days following the last day of a complaint investigation. Notification of
14 the availability of the independent informal dispute resolution process and an explanation of the
15 independent informal dispute resolution process shall be included in the transmittal.

16 (2) When the licensee returns its plan of correction to the secretary, the licensee may

17 request, in writing, to participate in the independent informal dispute resolution process to protest
18 or refute all or part of the cited deficiencies within ten working days. The secretary may not release
19 the final report until all dispute processes are resolved.

20 (3) The secretary shall approve and establish a panel of at least three independent review
21 providers: *Provided*, That in lieu of establishing a panel, the secretary may use an existing panel
22 of approved independent review providers. The secretary shall contract with the independent
23 review providers to conduct the independent informal dispute resolution processes. Each
24 independent review provider shall be accredited by the Utilization Review Accreditation
25 Commission. When a licensee requests an independent informal dispute resolution process, the
26 secretary shall choose one independent review provider from the approved panel to conduct the
27 process.

28 (4) The secretary shall refer the request to an independent review provider from the panel
29 of certified independent review providers approved by the department within five working days of
30 receipt of the written request for the independent informal dispute resolution process made by a
31 licensee. The secretary shall vary the selection of the independent review providers on a rotating
32 basis. The secretary shall acknowledge in writing to the licensee that the request for independent
33 review has been received and forwarded to the independent review provider. The notice shall
34 include the name and professional address of the independent review provider.

35 (5) The independent review provider shall hold an independent informal dispute resolution
36 conference, unless additional time is requested by either the licensee, the department or the
37 independent review provider and approved by the secretary, within ten working days of receipt of
38 the written request for the independent informal dispute resolution process made by a licensee.
39 The licensee or the department may submit additional information before the independent
40 informal dispute resolution conference.

41 (6) Neither the secretary nor the licensee may be accompanied by counsel during the
42 independent informal dispute resolution conference. The manner in which the independent

43 informal dispute resolution conference is held is at the discretion of the licensee, but is limited to:

44 (A) A review of written information submitted by the licensee;

45 (B) A telephonic conference; or

46 (C) A face-to-face conference held at a mutually agreed upon location.

47 (7) If the independent review provider determines the need for additional information,

48 clarification or discussion at the conclusion of the independent informal dispute resolution

49 conference, the secretary and the licensee shall present the requested information.

50 (8) The independent review provider shall make a determination within ten working days

51 of receipt of any additional information as provided in subdivision (7) of this section or the

52 conclusion of the independent informal dispute resolution conference, based upon the facts and

53 findings presented, and shall transmit a written decision containing the rationale for its

54 determination to the secretary.

55 (9) If the secretary disagrees with the determination, the secretary may reject the

56 determination made by the independent review provider and shall issue an order setting forth the

57 rationale for the reversal of the independent review provider's decision to the licensee within ten

58 working days of receiving the independent review provider's determination.

59 (10) If the secretary accepts the determination, the secretary shall issue an order affirming

60 the independent review provider's determination within ten working days of receiving the

61 independent review provider's determination.

62 (11) If the independent review provider determines that the original statement of

63 deficiencies should be changed as a result of the independent informal dispute resolution process

64 and the secretary accepts the determination, the secretary shall transmit a revised statement of

65 deficiencies to the licensee within ten working days of the independent review provider's

66 determination.

67 (12) The licensee shall submit a revised plan to correct any remaining deficiencies to the

68 secretary within ten working days of receipt of the secretary's order and the revised statement of

69 deficiencies.

70 (d) Under the following circumstances, the licensee is responsible for certain costs of the
71 independent informal dispute resolution review, which shall be remitted to the secretary within
72 sixty days of the informal conference order:

73 (1) If the licensee requests a face-to-face conference, the licensee shall pay any costs
74 incurred by the independent review provider that exceed the cost of a telephonic conference,
75 regardless of which party ultimately prevails;

76 (2) If the independent review provider's decision supports the entirety of the originally
77 written contested deficiency or adverse action taken by the secretary, the licensee shall reimburse
78 the secretary for the cost charged by the independent review provider; or

79 (3) If the independent review provider's decision supports some of the originally written
80 contested deficiencies, but not all of them, the licensee shall reimburse the secretary for the cost
81 charged by the independent review provider on a pro-rata basis as determined by the secretary.

82 (e) Establishment of the independent informal dispute resolution process does not
83 preclude licensees from utilizing other informal dispute resolution processes provided by statute
84 or rule in lieu of the independent informal dispute resolution process.

85 (f) Administrative and judicial review of a decision rendered through the independent
86 informal dispute resolution process may be made in accordance with §29A-5-1 et seq. of this
87 code.

88 (g) Any decision issued by the secretary as a result of the independent informal dispute
89 resolution process shall be made effective from the date of issuance.

90 (h) The pendency of administrative or judicial review does not prevent the secretary or a
91 licensee from obtaining injunctive relief as provided by statute or rule.

§27-9-2. Behavioral Mental Health Services Fund created.

1 There is created in the State Treasury a special revenue account to be designated the
2 "Behavioral Mental Health Services Fund" which is an interest-bearing account that may be

3 invested and retain all earnings. On or before August 1, 2010, the State Treasurer shall make a
4 one-time transfer of \$14,750,000 from Fund 1509 – Consumer Protection Recovery Fund,
5 administered by the Attorney General, into the Behavioral Mental Health Services Fund. All
6 moneys transferred to this fund shall be expended in accordance with the settlement provisions
7 of *State of West Virginia v. Eli Lilly and Company, Inc.*, United States District Court of the Eastern
8 District of New York, Civil Action No. 06-CV-5826. Nothing in this article may be construed to
9 mandate additional funding or to require any additional appropriation by the Legislature.

§27-9-3. Summary review for certain behavioral health facilities and services.

1 (a) A certificate of need as provided in §16-2D-1 et seq. of this code is not required by an
2 entity proposing additional behavioral health care services, but only to the extent necessary to
3 gain federal approval of the Medicaid MR/DD waiver program, if a summary review is performed
4 in accordance with the provisions of this section.

5 (b) Prior to initiating any summary review, the secretary shall direct the revision of the
6 state mental health plan as required by the provisions of 42 U.S.C. 300x and chapter twenty-
7 seven of this code. In developing those revisions, the secretary is to appoint an advisory
8 committee composed of representatives of the associations representing providers, child care
9 providers, physicians and advocates. The secretary shall request representatives from
10 appropriate departments with employees representing regulatory agencies, reimbursement
11 agencies and oversight agencies of the behavioral health system.

12 (c) If the secretary determines that specific services are needed but unavailable, he or she
13 shall provide notice of the department's intent to develop those services. Notice may be provided
14 through publication in the state register, publication in newspapers or a modified request for
15 proposal as developed by the secretary.

16 (d) The secretary may initiate a summary review of additional behavioral health care
17 services, but only to the extent necessary to gain federal approval of the Medicaid MR/DD waiver
18 program, by recommending exemption from the provisions of §16-2D-1 et seq. of this code to the

19 Health Care Authority. The recommendation is to include the following findings:

20 (1) That the proposed service is consistent with the state health plan and the state mental
21 health plan;

22 (2) That the proposed service is consistent with the department's programmatic and fiscal
23 plan for behavioral health services;

24 (3) That the proposed service contributes to providing services that prevent admission to
25 restrictive environments or enables an individual to remain in a nonrestrictive environment;

26 (4) That the proposed service contributes to reducing the number of individuals admitted
27 to inpatient or residential treatment programs or services;

28 (5) If applicable, that the proposed service will be community-based, locally accessible,
29 provided in an appropriate setting consistent with the unique needs and potential of each client
30 and his or her family and located in an area that is unserved or underserved or does not allow
31 consumers a choice of providers; and

32 (6) That sufficient funds are available for the proposed service without decreasing access
33 to or provision of existing services. The secretary may, from time to time, transfer funds pursuant
34 to the general provisions of the budget bill.

35 (e) The secretary's findings shall be filed with the secretary's recommendation and
36 appropriate documentation. If the secretary's findings are supported by the accompanying
37 documentation, the proposal does not require a certificate of need.

38 (f) Any entity that does not qualify for summary review is subject to a certificate of need
39 review.

40 (g) Any provider of the proposed services denied authorization to provide those services
41 pursuant to the summary review has the right to appeal that decision to the Board of Review as
42 set forth in chapter nine of this code.

ARTICLE 10. DEPARTMENT OF HEALTHCARE FACILITIES.

§27-10-1. Creation of department.

1 (a) The Legislature creates the Department of Healthcare Facilities. In creating this
2 department, the Legislature intends to continue on a reorganized basis state owned and operated
3 hospitals and behavioral health facilities. These changes shall become effective July 1, 2019.

4 (b) The rules of the Secretary of the Department of Health and Human Resources related
5 to the operation of any state owned and operated hospitals and behavioral health facilities bureau
6 and any other provisions of this article shall remain in effect until they are amended or rescinded
7 by the Secretary of the Department of Healthcare Facilities.

8 (c) For the purposes of this article the terms:

9 (1) "Department" means the Department of Healthcare Facilities; and

10 (2) "Secretary" means the Secretary of the Department of Healthcare Facilities.

§27-10-2. State facilities.

1 These following state hospitals and centers are managed, directed and controlled by the
2 Department of Healthcare Facilities who shall oversee their operation. These facilities shall
3 continue and be known respectively as the Welch Community Hospital, William R. Sharpe, Jr.
4 Hospital, Mildred-Mitchell Bateman Hospital, Hopemont Hospital, John Manchin Health Care
5 Center, Lakin Hospital, Jackie Withrow Hospital and the West Virginia Children's Home.

§27-10-3. Responsibility and powers of department; information and data to be supplied by other agencies.

1 The department is charged with:

2 (1) Supervision and coordination of the operation of the state hospitals as provided in this
3 article and of any other state hospitals, centers or institutions created for the care and treatment
4 of persons with behavioral health conditions, persons who are intellectually disabled, or both.

5 (2) The transfer of patients from any state hospital to any other state hospital or clinic
6 under the control of the secretary and, by agreement with the state Division of Corrections,
7 transfer a patient from a state hospital to an institution, other than correctional, under the

8 supervision of the state Division of Corrections.

9 (3) Making periodic reports to the secretary, Governor and to the Legislature on the
10 condition of the state hospitals, centers and institutions or on other matters within the authority of
11 the department, which shall include recommendations for improvement of any behavioral health
12 facility and any other matters affecting the mental health of the people of the state.

§27-10-4. Secretary of the department; qualifications.

1 (a) The administrative head of the department is the secretary, who shall be appointed
2 and compensated, as provided by §6-7-1 et seq. of this code.

3 (b) Before entering upon the duties of his or her office, the secretary shall take and
4 subscribe to the oath of office prescribed by section five, article four of the state Constitution.

5 (c) The secretary may not be a candidate for, or hold, any other public office or public
6 employment or be a member or officer of any political party committee, or serve as an election
7 official, or engage in any political activity, other than to vote, in an election. Any violation by the
8 secretary of the provisions of this subsection shall automatically vacate his or her appointment as
9 secretary.

§27-10-5. Organization of department.

1 Consistent with the provisions of §5F-2-1 of this code, the secretary may organize the
2 department into such other offices, divisions, agencies and other administrative units as he or she
3 sees as necessary.

§27-10-6. Acceptance of federal-state assistance and federal assistance.

1 The state and the department assent to the purposes of federal-state assistance and
2 federal assistance, accepts federal appropriations and other forms of assistance made under or
3 pursuant thereto, and authorizes the receipt of such appropriations into the state Treasury and
4 the receipt of other forms of assistance by the department for expenditure, disbursement, and
5 distribution by the department in accordance with the provisions of this chapter and the conditions
6 imposed by applicable federal laws, rules and regulations.

§27-10-7. Powers and duties of secretary.

1 Within limits of state appropriations and federal grants and subject to provisions of state
2 and federal laws and regulations, the secretary, in addition to all other powers, duties and
3 responsibilities granted and assigned to that office in this chapter and elsewhere by law, is
4 authorized to:

5 (1) Promulgate, amend, revise and rescind department rules respecting the organization
6 and government of the department and the execution and administration of those powers, duties
7 and responsibilities granted and assigned by this chapter and elsewhere by law to the department
8 and the secretary.

9 (2) For the protection of patients and residents in state hospitals, centers, or institutions,
10 the department shall be required to establish legislative rules governing the custody, use and
11 preservation of the records, papers, files and communications of the department.

12 (3) Obtain by purchase or lease grounds, buildings, office or other space, equipment,
13 facilities and services as may be necessary for the execution and administration of those powers,
14 duties and responsibilities granted and assigned by this chapter and elsewhere by law to the
15 department and the secretary.

16 (4) Sign and execute in the name of the state by the Department of Healthcare Facilities
17 any contract or agreement with the federal government or its agencies, other states, political
18 subdivisions of this state, corporations, associations, partnerships or individuals: *Provided, That*
19 the provisions of §5A-3-1 *et seq.* of this code are followed.

20 (5) Provide at department expense a program of continuing professional, technical and
21 specialized instruction for the personnel of the department.

22 (6) Pay from available funds all or part of the reasonable expenses incurred by a person
23 newly employed by the department in moving his household furniture, effects and immediate
24 family from his or her place of residence in this state to his or her place of employment in this
25 state; and to pay from available funds all or part of the reasonable expenses incurred by a

26 department employee in moving his or her household furniture, effects and immediate family as
27 a result of a reassignment of the employee which is considered desirable, advantageous to and
28 in the best interests of the state, but no part of the moving expenses of any one such employee
29 shall be paid more frequently than once in twelve months or for any movement other than from
30 one place of employment in this state to another place of employment in this state.

31 (7) Establish a program to provide reimbursement to employees of the department whose
32 items of personal property, as defined by the department by policy, are damaged during the
33 course of employment or other work-related activity as a result of aggressive behavior by a client
34 or patient receiving services from the department: *Provided*, That such reimbursement is limited
35 to a maximum amount of \$250.00 per claim.

36 (8) Delegate to the personnel of the department all powers and duties vested in the
37 secretary, except the power and authority to sign contracts and agreements.

38 (9) Provide a citizen or group of citizens an opportunity to file objections and to be heard
39 upon objections to the grant of any class of medical assistance.

40 (10) (A) Serve, by certified mail or personal service, an administrative subpoena on any
41 person, corporation, partnership, financial institution, labor organization or state agency for an
42 appearance or for production of documents necessary for administration of the public assistance
43 programs of the department. In the case of disobedience to the subpoena, the secretary may
44 invoke the aid of any circuit court in requiring the appearance or production of records and
45 documents.

46 (B) Apply to the circuit court of any county in which any hearing is to be held, or the circuit
47 court in which the subpoena or subpoena duces tecum is to be served, or the judge of either such
48 court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel the
49 attendance of witnesses or the production of documents, before any hearing or administrative
50 tribunal convened to consider suspension or termination of any person or corporation from
51 providing services under the public assistance programs administered by the department.

52 (11) Accept and use for the benefit of a state hospital, center or institution, or for any other
53 mental health purpose specified in this chapter, any gift or devise of any property or thing which
54 lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state
55 hospital, center or institution, it shall be used as specified. Any gift or devise of any property or
56 thing which lawfully may be given and whatever profit may arise from its use or investment shall
57 be deposited in a special revenue fund with the State Treasurer, and shall be used only as
58 specified by the donor or donors.

59 (12) To establish policies and procedures for governing the administration and business
60 management of the state hospitals;

61 (13) To formulate standard fiscal procedures and make recommendations for
62 improvement of state hospitals;

63 (14) To maintain the land, buildings and equipment of state hospitals;

64 (15) To provide for a procedure for supplies and equipment of state hospitals;

65 (16) Acquire by condemnation or otherwise any interest, right, privilege, land or
66 improvement and hold title to the land or improvement, for the use or benefit of the state or a state
67 hospital or facility;

68 (17) Sell, exchange or otherwise convey any interest, right, privilege, land or improvement
69 acquired or held by the state, state hospital or state facility and deposit the proceeds from the
70 sale, exchange or other conveyance into the hospital services revenue account. This may only
71 be done with the consent of the Governor, and any condemnation proceedings shall be conducted
72 pursuant to chapter fifty-four of this code;

73 (18) (A) Divest of the facilities; land; buildings and improvements; contents; employment,
74 patient and contractual interests; licenses for staffed beds; and all other assets utilized in the
75 current operation of the facility excluding any cash, cash equivalents and marketable securities
76 of any state-owned hospital, center and institution.

77 (B) Any sale pursuant to this subdivision:

78 (i) Is not subject to the purchasing requirements of §5A-3-1 et seq. of this code;

79 (ii) Are exempt from certificate of need requirements provided in §16-2D-1 et seq. of this
80 code; and

81 (iii) Are exempt from Medicaid rules and policies.

82 (19) Make such reports in such form and containing such information as may be required
83 by applicable federal laws and rules respecting federal-state assistance and federal assistance;
84 and

85 (20) Invoke any legal, equitable or special remedies for the enforcement of the provisions
86 of this article.

§27-10-8. Attorney General and prosecuting attorneys to render legal services to secretary.

1 The Attorney General, the Attorney General’s assistants, and the prosecuting attorneys of
2 the various counties shall render to the secretary as set forth in this article, without additional
3 compensation, the legal services as the secretary and the commissioners shall require of them in
4 the discharge of their duties. this section does not prohibit the department from developing plans
5 for cooperation with courts, prosecuting attorneys, and other law-enforcement officials in a
6 manner as to permit the state and its citizens to obtain maximum fiscal benefits under federal
7 laws, rules and regulations.

ARTICLE 11. 9. STATE HOSPITALS AND BEHAVIORAL HEALTH FACILITIES.

§27-11-1. State hospitals and other facilities; transfer of control and property from Department of Health and Human Resources to Department of Healthcare Facilities.

1 (a) The state hospitals are continued and known respectively as the Welch Community
2 Hospital, William R. Sharpe, Jr. Hospital, Mildred-Mitchell Bateman Hospital, Hopemont Hospital,
3 John Manchin Health Care Center, Lakin Hospital, Jackie Withrow Hospital and the West Virginia
4 Children’s Home. These state hospitals and centers are managed, directed and controlled by the
5 department.

6 (b) The Secretary of the Department of Healthcare Facilities is authorized to bring and
7 maintain the state hospitals into structural compliance with appropriate fire and health standards.

8 (c) The control of the property, records, and financial and other affairs of state hospitals
9 and other state behavioral health facilities is transferred from the Department of Health and
10 Human Resources to the Department of Healthcare Facilities. The secretary shall, in respect to
11 the control and management of the state hospitals and other state behavioral health facilities,
12 perform the same duties and functions as were heretofore exercised or performed by the
13 Secretary of the Department of Health and Human Resources. The title to all property of the state
14 hospitals and other state facilities is transferred to and vested in the Department of Healthcare
15 Facilities.

16 (d) Notwithstanding any other provisions of this code to the contrary, whenever in this
17 code there is a reference to the Department of Mental Health or the Secretary of the Department
18 of Health and Human Resources it shall be construed to mean and is a reference to the
19 Department of Healthcare Facilities.

§27-11-2. Chief executive officers; qualifications; salaries of officers and employees.

1 (a) The chief executive officer of a state hospital shall be appointed by, and serve at the
2 will and pleasure of the secretary. He or she shall be a college graduate and have a minimum
3 of two years' experience in business administration, health services administration, hospital
4 administration or other relevant experience. Consideration shall be given to persons with broad
5 knowledge of accounting, purchasing and personnel practices as related to the rendition of health
6 and health related services.

7 (b) All persons employed within a state hospital shall be paid a salary as determined by
8 the secretary. All employees are entitled to full state benefits.

§27-11-3. Rulemaking as to patients.

1 (a) The secretary shall propose rules for legislative approval in accordance with the
2 provision of §29A-3-1 et seq. of this code regarding to the admission of patients to behavioral

3 health facilities, the care, maintenance and treatment of inpatients, residents and outpatients of
 4 such facilities and the release, trial visit and discharge of patients therefrom.

5 (b) These rules shall provide, at a minimum:

6 (1) That no patient under eighteen years of age in any state hospital shall be housed in
 7 any area also occupied by any patient over eighteen years of age;

8 (2) That any patient adjudged by the chief medical officer of the facility to have a likelihood
 9 of seriously harming others shall be confined in a secure area of a health facility; and

10 (3) Electronic and printed forms to be used for commitment to and discharge from the
 11 state hospitals.

ARTICLE 12. 10. MAINTENANCE OF BEHAVIORAL HEALTH PATIENTS AND
PERSONS WITH INTELLECTUAL DISABILITIES.

§27-12-1. Maintenance of patients; patient assets; reimbursement procedures.

1 (a) The cost of the maintenance of patients admitted to the state hospitals shall be paid
 2 out of funds appropriated for the department. State hospitals, through the commissioner, shall
 3 have a right of reimbursement, for all or any part of such maintenance from:

4 (1) Private insurance, if available;

5 (2) Each patient or from the committee or guardian of the estate of the patient;

6 (3) The estate of the patient if deceased;

7 (4) If that be insufficient, from the patient's husband or wife; or

8 (5) If the patient be an unemancipated child, the father and mother, or any of them.

9 (b) If such a relative so liable does not reside in this state and has no estate or debts due
 10 him or her within the state by means of which the liability can be enforced against him or her, the
 11 other relatives shall be liable as provided by this section.

12 (c) In exercising this right of reimbursement, the commissioner may, whenever it is
 13 deemed just and expedient to do so, exonerate any person chargeable with such maintenance

14 from the payment thereof in whole or in part, if the commissioner finds that such person is unable
15 to pay or that payment would work an undue hardship on him or her or on those dependent upon
16 him or her.

17 (d) There shall be no discrimination on the part of the state hospitals as to food, care,
18 protection, treatment or rehabilitation, between patients who pay for their maintenance and those
19 who are unable to do so.

20 (e) It shall be the responsibility of the commissioner as provided by rules promulgated by
21 the secretary to determine the ability of the patient or of his or her relative to pay for his or her
22 maintenance. Any such determination shall be in writing and shall be considered an "order" under
23 the provisions of chapter 29A of this code. Any such determination shall be subject to review upon
24 application of any such patient, relative or personal representative in the manner provided in
25 chapter 29A of this code.

§27-12-2. Local mental health programs -- Separate account for receiving and expending gifts, bequests, donations, fees and miscellaneous income.

1 (a) A circuit court establishing a local mental health program as provided for in this article
2 shall have the power and authority to establish a separate account and to deposit in said separate
3 account all gifts, bequests and donations from any person, corporation, firm or association and
4 any fees or other income derived from the operation of such local mental health program and may
5 expend such funds accruing in said separate account for the operation and maintenance of such
6 local program.

7 (b) Any moneys remaining in said separate account at the end of the fiscal year shall not
8 revert to the general fund of the county nor otherwise expire, but shall be carried over from year
9 to year until expended for the operation and maintenance of said local mental health program.

§27-12-3. Care of patients in boarding homes.

1 (a) The commissioner may, upon the recommendation of the chief executive officer of a
2 the state hospital, provide care in a suitable boarding home for any patient in a state hospital, if

3 the condition of the patient is such that his or her and the public welfare will not be prejudiced
4 thereby.

5 (b) A patient in a boarding home shall be deemed to be a patient of the state hospital from
6 which he or she was removed and shall, on the approval of the chief executive officer, be placed
7 under the supervision of a psychiatric social worker employed by the state hospital.

8 (c) All patients in such homes shall be visited at least once every three months and if upon
9 the visitation they are found to be abused, neglected or improperly cared for, they shall be
10 returned to the state hospital or placed in a better boarding home.

11 (d) The cost of the boarding home care shall be paid by the state hospital from which he
12 or she was removed.

§27-12-4. Reports and records.

1 (a) The chief executive officer of each state hospital shall furnish to the Secretary of the
2 Department of Healthcare Facilities such information as he or she may require concerning
3 admissions, discharges, deaths and other matters.

4 (b) The Secretary of the Department of Healthcare Facilities shall keep such records as
5 are necessary to enable him or her to have current information concerning the extent of mental
6 illness in this state.

7 (c) The names of individuals shall not be accessible to anyone except by permission of
8 the commissioner or by order of a judge of a court of record.

§27-12-5. Moneys received by state hospitals and facilities.

1 All moneys and funds belonging to the state which shall come into the possession or under
2 the control of the chief executive officer or other employees or officers of a state hospital or facility
3 under the control of the Department of Healthcare Facilities shall be paid to the Secretary of the
4 Department of Healthcare Facilities, or his or her designee, in a manner prescribed by the
5 secretary. The secretary, or his or her designee, shall pay such moneys and funds into the State
6 Treasury immediately in the manner provided in §12-2-1 *et seq.* of this code.

ARTICLE 13. 11. BEHAVIORAL HEALTH-INTELLECTUAL DISABILITY CENTERS.**§27-13-1. Comprehensive community behavioral health-intellectual disability centers; establishment, operation and location; access to treatment.**

1 (a) Subject to available funding, the Department of Healthcare Facilities is authorized to
2 establish, maintain and operate comprehensive community behavioral health centers and
3 comprehensive intellectual disability facilities, at locations within the state that are determined by
4 the secretary in accordance with the state's comprehensive behavioral health plan and the state's
5 comprehensive intellectual disability plan.

6 (b) Any such facility may be integrated with a general health care or other facility or remain
7 separate.

8 (c) Nothing contained herein may be construed to allow the department to assume the
9 operation of comprehensive regional behavioral health centers or comprehensive intellectual
10 disability facilities which have been previously been established according to law and which, as
11 of the effective date of this article, are being operated by local nonprofit organizations.

12 (d) Any new behavioral health centers and comprehensive mental disability facilities may
13 be operated and controlled by the department or operated, maintained and controlled by local
14 nonprofit organizations and licensed according to state law and rules.

§27-13-2. Minimum requirements.

1 (a) All comprehensive regional behavioral health and intellectual disability facilities
2 licensed in the state shall:

3 (1) Have a written plan for the provision of diagnostic, treatment, supportive and aftercare
4 services, and written policies and procedures for implementing these services;

5 (2) Have sufficient employees appropriately qualified to provide these services;

6 (3) Maintain accurate medical and other records for all patients receiving services;

7 (4) Render outpatient services in the aftercare of any patient discharged from an inpatient
8 hospital, consistent with the needs of the individual;

9 (5) Have a chief administrative officer directly responsible to a legally constituted board of
10 directors of a comprehensive mental health or intellectual disability facility operated by a local
11 nonprofit organization, or to the commissioner if the comprehensive mental health or intellectual
12 disability center or facility is operated by the department; and

13 (6) Have a written plan for the referral of patients for evaluation and treatment for services
14 not provided.

15 (b) No person who can be treated as an outpatient at a community mental health center
16 may be admitted involuntarily into a state hospital.

17 (c) The state's share of costs of operating the facilities may be provided from funds
18 appropriated for this purpose within the budget of the department. The secretary shall administer
19 these funds among all comprehensive mental health and intellectual disability facilities that are
20 required to best provide comprehensive community mental health care and services to the
21 citizens of the state.

§27-13-3. Reporting Requirements.

1 After July 1, but not later than August 1 of each year, the chief administrative officer of
2 each comprehensive regional behavioral health center and intellectual disability facility shall
3 submit a report to the commissioner and to the Legislative Auditor containing a listing of:

4 (1) All funds received by the center or facility;

5 (2) All funds expended by the center or facility;

6 (3) All funds obligated by the center or facility;

7 (4) All services provided by the center or facility;

8 (5) The number of persons served by the center or facility; and

9 (6) Other information as the secretary prescribes by rule.

§27-13-4. Rulemaking.

1 The secretary may propose rules for legislative approval in accordance with the provisions
2 of §29A-3-1 et seq. of this code to effectuate the provisions of this article.

ARTICLE 14. 12. GROUP RESIDENTIAL FACILITIES.**§27-14-1. Definitions.**

1 (a) "Developmental disability" means a chronic disability of a person which:

2 (1) Is attributable to a mental or physical impairment or combination of mental and physical
3 impairments;

4 (2) Is likely to continue indefinitely;

5 (3) Results in substantial functional limitations in self-direction, capacity for independent
6 living or economic self-sufficiency; and

7 (4) Reflects the person's need for a combination and sequence of special, interdisciplinary
8 or generic care, treatment or other services which are of lifelong or extended duration and are
9 individually planned and coordinated.

10 (b) "Behavioral disability" means a disability of a person which:

11 (1) Is attributable to severe or persistent mental illness, emotional disorder or chemical
12 dependency; and

13 (2) Results in substantial functional limitations in self-direction, capacity for independent
14 living or economic self-sufficiency.

15 (c) "Group residential facility" means a facility which is owned, leased or operated by a
16 behavioral health service provider and which:

17 (1) Provides residential services and supervision for individuals who are developmentally
18 disabled or behaviorally disabled;

19 (2) Is occupied as a residence by not more than eight individuals who are developmentally
20 disabled and not more than three supervisors or is occupied as a residence by not more than
21 twelve individuals who are behaviorally disabled and not more than three supervisors;

22 (3) Is licensed by the Office of Health Facility Licensure and Certification; and

23 (4) Complies with the state Fire Commission for residential facilities.

24 (d) "Group residential home" means a building owned or leased by developmentally
 25 disabled or behaviorally disabled persons for purposes of establishing a personal residence. A
 26 behavioral health service provider may not lease a building to such persons if the provider is
 27 providing services to the persons without a license as required for in this article.

§27-14-2. Permitted use of group residential facilities; restrictions.

1 Both a group residential facility and a group residential home shall be a permitted
 2 residential use of property for the purposes of zoning and shall be a permitted use in all zones or
 3 districts. No county commission, governing board of a municipality or planning commission shall
 4 require a group residential facility, its owner or operator, to obtain a conditional use permit, special
 5 use permit, special exception or variance for location of such facility in any zone or district.

§27-14-3. License from Office of Health Facility Licensure and Certification.

1 (a) No group residential facility shall be established, maintained or operated unless a
 2 license therefor shall be first obtained from the Office of Health Facility Licensure and Certification,
 3 except that a group residential facility for behaviorally disabled juveniles shall be deemed to
 4 satisfy all requirements of this section by obtaining a license from the Office of Health Facility
 5 Licensure and Certification. The application for such license shall contain such data as required
 6 by rule promulgated pursuant to this section.

7 (b) The Office of Health Facility Licensure and Certification may promulgate rules for
 8 legislative approval pursuant to §29A-3-1 et seq. for the licensing and operation of such facilities,
 9 including, but not limited to, a statement of the rights of patients in group residential facilities for
 10 the mentally and physically impaired to ensure the adequate care and supervision of such
 11 patients, and shall have the authority to investigate and inspect any such facility, and may revoke
 12 the license of any such facility for good cause after notice and hearing.

13 (c) A group residential home is not required to obtain a license.

§27-14-4. Exclusion by private agreement void.

1 Any restriction, reservation, condition, exception or covenant in any subdivision plan,

2 deed, or other instrument of, or pertaining to, the transfer, sale, lease or use of property which
3 would permit residential use of property but prohibit the use of such property as a group residential
4 facility or group residential home shall, to the extent of such prohibition, be void as against the
5 public policy of this state and shall be given no legal or equitable force or effect.

ARTICLE 15. 13. VOLUNTARY HOSPITALIZATION.

§27-15-1. Authority to receive voluntary patients.

1 (a) The chief medical officer of a behavioral health facility, subject to the availability of
2 suitable accommodations and to the rules promulgated by the commissioner shall admit for
3 diagnosis, care and treatment any individual:

4 (1) Eighteen years of age or older who is mentally ill, intellectually disabled or addicted or
5 who has manifested symptoms of mental illness, intellectual disability or addiction and who makes
6 application for hospitalization; or

7 (2) Under eighteen years of age who is mentally ill, intellectually disabled or addicted or
8 who has manifested symptoms of mental illness, intellectual disability or addiction and where
9 there is an application for hospitalization, either made in person at the time of admission or by a
10 notarized written application submitted by facsimile, e-mail or in person prior to, or at the time of,
11 admission, on his or her behalf as follows:

12 (A) By the parents of such person;

13 (B) If only one parent is living, then by such parent;

14 (C) If the parents are living separate and apart, then by the parent who has primary
15 custody of such person; or

16 (D) If there is a guardian who has legal custody of such person, then by such guardian.

17 (E) If the subject person under eighteen years of age is an emancipated minor, the
18 admission of that person as a voluntary patient shall be conditioned upon the consent of the
19 patient.

20 (F) If the application for the subject person under eighteen years of age does not satisfy
21 one of paragraphs (A) through (E) of this subdivision, the provisions for involuntary hospitalization
22 as set forth in this chapter shall be followed with respect to any hospitalization.

23 (b) For any application for hospitalization made pursuant to subdivision (2) of subsection
24 (a) of this section, the person making the application shall transport the minor to the behavioral
25 health facility, except as provided in this section.

26 (c) If the minor is violent or combative or the parent or guardian faces other circumstances
27 that make the parent or guardian unable to transport the minor to the behavioral health facility,
28 the parent or guardian may file an affidavit with the circuit court of the county in which the minor
29 resides or of the county in which the minor may be found. The parent or guardian shall give
30 information and state facts in the affidavit as may be required by the form provided for this purpose
31 by the Supreme Court of Appeals. Upon ex parte review of the affidavit, a mental hygiene
32 commissioner or circuit court judge, or when none are available the magistrate designated
33 pursuant to the involuntary hospitalization procedure set forth in this chapter, may determine that
34 the parent or guardian is unable to transport the minor for voluntary hospitalization and, if such a
35 determination is made, shall enter an order requiring the sheriff of that county to transport the
36 minor to the behavioral health facility.

37 (d) No person under eighteen years of age may be admitted pursuant to this section to
38 any state hospital unless the person has first been reviewed and evaluated by a local behavioral
39 health facility and recommended for admission.

40 (e) If the candidate for voluntary admission is a minor who is fourteen years of age or
41 older, the admitting health care facility shall determine if the minor consents to, or objects to, his
42 or her admission to the facility.

43 (f) If the parent or guardian who requested the minor's admission pursuant to this section
44 revokes his or her consent at any time, or if the minor fourteen years of age or older objects at
45 any time to his or her further treatment, the minor shall be discharged within ninety-six hours to

46 the custody of the consenting parent or guardian, unless the chief medical officer of the behavioral
47 health facility files a petition for involuntary hospitalization or the minor's continued hospitalization
48 is authorized as an involuntary hospitalization pursuant to this chapter. If the ninety-six hour time
49 period would result in the minor being discharged and released on a Saturday, a Sunday or a
50 holiday on which the court is closed, the period of time in which the patient shall be released by
51 the facility shall be extended until the next day which is not a Saturday, Sunday or legal holiday
52 on which the court is lawfully closed.

53 (g) Nothing in this section may be construed to obligate the State of West Virginia for costs
54 of voluntary hospitalizations permitted by the provisions of this section.

55 (h) For the purposes of this section, all behavioral health facilities in this state shall make
56 a blank copy of their application for admission immediately available to any person or entity who
57 requests the application. The application is "immediately available" if it is promptly sent by
58 facsimile or e-mail to the requesting person or entity, or available through other immediate
59 electronic means, such as posting the blank application on the facility's public website.

§27-15-2. Release of voluntary patients.

1 The chief medical officer of a behavioral health facility shall release any voluntary patient
2 who, in his or her opinion, has recovered or whose hospitalization is no longer advisable but he
3 or she shall make every effort to assure that any further supportive services required to meet the
4 patient's need upon his or her release will be provided.

§27-15-3. Right to release on application.

1 (a) A voluntary patient who requests his or her release or whose release is requested in
2 writing by his or her parents, parent, guardian, spouse or adult next of kin shall be released
3 immediately except that:

4 (1) If the patient was admitted on his or her own application, and request for release is
5 made by a person other than the patient, release shall be conditioned upon the agreement of the
6 patient thereto;

7 (2) If the patient is under eighteen years of age, his or her release prior to becoming
8 eighteen years of age may be conditioned upon the consent of the person or persons who applied
9 for his or her admission; or

10 (3) If, within ninety-six hours of the receipt of the request, the chief medical officer of the
11 behavioral health facility in which the patient is hospitalized files with the clerk of the circuit court
12 or mental hygiene commissioner of the county where the facility is situated an application for
13 involuntary hospitalization as provided in this chapter, release may be postponed for twenty days
14 pending a finding in accordance with the legal proceedings prescribed therein.

15 (b) Legal proceedings for involuntary hospitalization shall not be commenced with respect
16 to a voluntary patient unless release of the patient has been requested by him or her or the
17 individual or individuals who applied for his or her admission.

§27-15-4. Admission and treatment of voluntary patients; statement of rights; consent for treatment.

1 (a) No person shall be admitted as an inpatient into a behavioral health facility as a
2 voluntary patient until such person has been told and has received a written statement containing
3 in bold print a statement that:

4 (1) Once he or she voluntarily admits himself or herself into such facility, his or her release
5 may not be voluntary;

6 (2) That the facility may seek to involuntarily commit him or her and may hold him or her
7 against his or her will for thirty days pending a hearing and indefinitely after the hearing if he or
8 she is committed; and

9 (3) That such statement shall inform the individual that he or she may request release at
10 any time.

11 (b) The individual shall be advised in writing of his or her rights upon admission as an
12 inpatient to a behavioral health facility, including, but not limited to, the right to judiciary review as
13 set forth this chapter. A copy of the statement shall be filed in the individual's permanent records

14 and shall contain the name of the person who made the oral and written disclosure.

15 (c) No voluntary inpatient shall be subjected to any course of treatment without such
16 patient's written consent. Such consent shall be revocable at any time and shall not be valid for a
17 period exceeding six months.

18 (d) One person in every behavioral health facility shall be designated as the voluntary
19 patient coordinator. Such coordinator, or his or her designee while the coordinator is not on duty,
20 shall be responsible for the disclosures required by this section and for any and all discussions
21 with voluntary patients relative to release.

ARTICLE 16. 14. INVOLUNTARY HOSPITALIZATION.

§27-16-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner, prosecuting attorney, sheriff and Supreme Court of Appeals.

1 (a) Appointment of mental hygiene commissioners. --

2 (1) The chief judge in each judicial circuit of this state shall appoint a competent attorney
3 and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to
4 preside over involuntary hospitalization hearings. mental hygiene commissioners shall be persons
5 of good moral character and of standing in their profession and they shall, before assuming the
6 duties of such commissioner, take the oath required of other special commissioners as provided
7 in §6-1-1 et seq. of this code.

8 (2) All persons newly appointed to serve as mental hygiene commissioners shall attend
9 and complete an orientation course, within one year of their appointment, consisting of at least
10 three days of training provided annually by the Supreme Court of Appeals. In addition, existing
11 mental hygiene commissioners and any magistrates designated by the chief judge of a judicial
12 circuit to hold probable cause and emergency detention hearings involving involuntary
13 hospitalization shall attend and complete a course provided by the Supreme Court of Appeals,
14 which course shall include, but not be limited to, instruction on the manifestations of mental illness

15 and addiction. Persons attending such courses outside the county of their residence shall be
16 reimbursed out of the budget of the Supreme Court -- General Judicial for reasonable expenses
17 incurred. The Supreme Court shall establish rules for such courses, including rules providing for
18 the reimbursement of reasonable expenses as authorized herein.

19 (3) All mental hygiene commissioners shall be reasonably compensated at a uniform rate
20 determined by the Supreme Court of Appeals. mental hygiene commissioners shall submit all
21 requests for compensation to the administrative director of the courts for payment.

22 (4) Mental hygiene commissioners shall discharge their duties and hold their offices at the
23 pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be
24 removed at any time by such chief judge.

25 (b) Duties of mental hygiene commissioners. --

26 (1) Mental hygiene commissioners may sign and issue summonses for the attendance, at
27 any hearing held pursuant to this article, of the individual sought to be committed; may sign and
28 issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under
29 oath; may elicit testimony from applicants, respondents and witnesses regarding factual issues
30 raised in the petition; and may make findings of fact on evidence and may make conclusions of
31 law, but such findings and conclusions shall not be binding on the circuit court.

32 (2) It shall be the duty of a mental hygiene commissioner to conduct orderly inquiries into
33 the mental health of the individual sought to be committed concerning the advisability of
34 committing the individual to a behavioral health facility.

35 (3) The mental hygiene commissioner shall safeguard, at all times, the rights and interests
36 of the individual as well as the interests of the state.

37 (4) The mental hygiene commissioner shall make a written report of his or her findings to
38 the circuit court.

39 (5) A mental hygiene commissioner appointed by the circuit court of one county or multiple
40 county circuit may serve in such capacity in a jurisdiction other than that of his or her original

41 appointment if such be agreed upon by the terms of a cooperative agreement between the circuit
42 courts and county commissions of two or more counties entered into to provide prompt resolution
43 of mental hygiene matters during noncourt hours or on nonjudicial days.

44 (6) In any proceedings before any court of record as set forth in this article, the court of
45 record shall appoint an interpreter for any individual who is deaf or cannot speak or who speaks
46 a foreign language and who may be subject to involuntary commitment to a behavioral health
47 facility.

48 (c) Duties of prosecuting attorney. -- It shall be the duty of the prosecuting attorney or one
49 of his or her assistants to represent the applicants in all final commitment proceedings filed
50 pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding
51 held pursuant to the provisions of this article if he or she deems it to be in the public interest.

52 (d) Duties of sheriff. --

53 (1) Upon written order of the circuit court, mental hygiene commissioner or magistrate in
54 the county where the individual formally accused of being mentally ill or addicted is a resident or
55 is found, the sheriff of that county shall take said individual into custody and transport him or her
56 to and from the place of hearing and the behavioral health facility. The sheriff shall also maintain
57 custody and control of the accused individual during the period of time in which the individual is
58 waiting for the involuntary commitment hearing to be convened and while such hearing is being
59 conducted.

60 (2) An individual who is a resident of a state other than West Virginia shall, upon a finding
61 of probable cause, be transferred to his or her state of residence for treatment pursuant to this
62 article. Where an individual is a resident of West Virginia but not a resident of the county in which
63 he or she is found and there is a finding of probable cause, the county in which the hearing is held
64 may seek reimbursement from the county of residence for reasonable costs incurred by the
65 county attendant to the mental hygiene proceeding.

66 (3) Notwithstanding any provision of this code to the contrary, sheriffs may enter into

67 cooperative agreements with sheriffs of one or more other counties, with the concurrence of their
68 respective circuit courts and county commissions, whereby transportation and security
69 responsibilities for hearings held pursuant to the provisions of this article during noncourt hours
70 or on nonjudicial days may be shared in order to facilitate prompt hearings and to effectuate
71 transportation of persons found in need of treatment.

72 (e) Duty of sheriff upon presentment to behavioral health care facility. -- Where a person
73 is brought to a behavioral health care facility for purposes of evaluation for commitment pursuant
74 to this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain
75 custody of the person in the facility until the evaluation is completed or the county commission
76 shall reimburse the behavioral health care facility at a reasonable rate for security services
77 provided by the behavioral health care facility for the period of time the person is at the hospital
78 prior to the determination of mental competence or incompetence.

79 (f) Duties of Supreme Court of Appeals. -- The Supreme Court of Appeals shall provide
80 uniform petition, procedure and order forms which shall be used in all involuntary hospitalization
81 proceedings brought in this state.

§27-16-2. Appointment of attorney to aid prosecutor; certification of performance; fee.

1 If, in any case, the prosecuting attorney and his or her assistants in a county in which there
2 is a state behavioral health hospital are unable to act due to a burdensome number of cases
3 brought pursuant to this article, the circuit court shall appoint a competent practicing attorney to
4 act in that case. The court shall certify to the director of the administrative office of the Supreme
5 Court of Appeals the performance of that service when completed and may allow the attorney a
6 reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as
7 provided in §29-21-1 et seq. of this code. Compensation shall be paid out of the "Mental Hygiene
8 Fund" provided for in this article.

§27-16-3. Institution of proceedings for involuntary custody for examination; custody;
probable cause hearing; examination of individual.

1 (a) Any adult person may make an application for involuntary hospitalization for
2 examination of an individual when the person making the application has reason to believe that
3 the individual to be examined is addicted, as defined in this chapter, or is mentally ill and, because
4 of his or her addiction or mental illness, the individual is likely to cause serious harm to himself,
5 herself or to others if allowed to remain at liberty while awaiting an examination and certification
6 by a physician or psychologist.

7 (b) Notwithstanding any language in this section to the contrary, if the individual to be
8 examined pursuant to the provisions of this section is incarcerated in a jail, prison or other
9 correctional facility, then only the chief administrative officer of the facility holding the individual
10 may file the application and the application must include the additional statement that the
11 correctional facility itself cannot reasonably provide treatment and other services for the
12 individual's mental illness or addiction.

13 (c) The person making the application shall make the application under oath.

14 (d) Application for involuntary custody for examination may be made to the circuit court or
15 a mental hygiene commissioner of the county in which the individual resides or of the county in
16 which he or she may be found. When no circuit court judge or mental hygiene commissioner is
17 available for immediate presentation of the application, the application may be made to a
18 magistrate designated by the chief judge of the judicial circuit to accept applications and hold
19 probable cause hearings. A designated magistrate before whom an application or matter is
20 pending may, upon the availability of a mental hygiene commissioner or circuit court judge for
21 immediate presentation of an application or pending matter, transfer the pending matter or
22 application to the mental hygiene commissioner or circuit court judge for further proceedings
23 unless otherwise ordered by the chief judge of the judicial circuit.

24 (e) The person making the application shall give information and state facts in the
25 application as may be required by the form provided for this purpose by the Supreme Court of
26 Appeals.

27 (f)(1) The circuit court, mental hygiene commissioner or designated magistrate may enter
28 an order for the individual named in the application to be detained and taken into custody for the
29 purpose of holding a probable cause hearing as provided in subsection (g) of this section for the
30 purpose of an examination of the individual by a physician, psychologist, a licensed independent
31 clinical social worker practicing in compliance with §30-30-1 et seq. of this code, an advanced
32 practice registered nurse with psychiatric certification practicing in compliance with §30-7-1 et
33 seq. of this code, a physician assistant practicing in compliance with §30-3-1 et seq. of this code
34 or a physician assistant practicing in compliance with §30-14A-1 et seq. of said code.

35 (2) A licensed independent clinical social worker, a physician assistant or an advanced
36 practice registered nurse with psychiatric certification may only perform the examination if he or
37 she has previously been authorized by an order of the circuit court to do so, the order having
38 found that the licensed independent clinical social worker, physician assistant or advanced
39 practice registered nurse with psychiatric certification has particularized expertise in the areas of
40 mental health and mental hygiene or addiction sufficient to make the determinations as are
41 required by the provisions of this section.

42 (3) The examination is to be provided or arranged by a community mental health center
43 designated by the secretary to serve the county in which the action takes place.

44 (4) The order is to specify that the hearing be held forthwith and is to provide for the
45 appointment of counsel for the individual.

46 (5) The order may allow the hearing to be held up to twenty-four hours after the person to
47 be examined is taken into custody rather than forthwith if the circuit court of the county in which
48 the person is found has previously entered a standing order which establishes within that
49 jurisdiction a program for placement of persons awaiting a hearing which assures the safety and
50 humane treatment of persons.

51 (6) The time requirements set forth in this subsection only apply to persons who are not in
52 need of medical care for a physical condition or disease for which the need for treatment precludes

53 the ability to comply with the time requirements.

54 (7) During periods of holding and detention authorized by this subsection, upon consent
55 of the individual or in the event of a medical or psychiatric emergency, the individual may receive
56 treatment. The medical provider shall exercise due diligence in determining the individual's
57 existing medical needs and provide treatment the individual requires, including previously
58 prescribed medications. As used in this section, "psychiatric emergency" means an incident
59 during which an individual loses control and behaves in a manner that poses substantial likelihood
60 of physical harm to himself, herself or others.

61 (8) Where a physician, psychologist, licensed independent clinical social worker, physician
62 assistant or advanced practice registered nurse with psychiatric certification has, within the
63 preceding seventy-two hours, performed the examination required by the provisions of this
64 subdivision, the community mental health center may waive the duty to perform or arrange
65 another examination upon approving the previously performed examination.

66 (9) Notwithstanding the provisions of this subsection, §27-16-5(s) of this code applies
67 regarding payment by the county commission for examinations at hearings.

68 (10) If the examination reveals that the individual is not mentally ill or addicted or is
69 determined to be mentally ill or addicted but not likely to cause harm to himself, herself or others,
70 the individual shall be immediately released without the need for a probable cause hearing and
71 absent a finding of professional negligence the examiner is not civilly liable for the rendering of
72 the opinion.

73 (11) The examiner shall immediately provide the mental hygiene commissioner, circuit
74 court or designated magistrate before whom the matter is pending the results of the examination
75 on the form provided for this purpose by the Supreme Court of Appeals for entry of an order
76 reflecting the lack of probable cause.

77 (g) A probable cause hearing is to be held before a magistrate designated by the chief
78 judge of the judicial circuit, the mental hygiene commissioner or circuit judge of the county of

79 which the individual is a resident or where he or she was found. If requested by the individual or
80 his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours.

81 (h)(1) The individual must be present at the hearing and has the right to present evidence,
82 confront all witnesses and other evidence against him or her and to examine testimony offered,
83 including testimony by representatives of the community mental health center serving the area.
84 Expert testimony at the hearing may be taken telephonically or via videoconferencing.

85 (2) The individual has the right to remain silent and to be proceeded against in accordance
86 with the Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of
87 this code.

88 (3) At the conclusion of the hearing, the magistrate, mental hygiene commissioner or
89 circuit court judge shall find and enter an order stating whether or not there is probable cause to
90 believe that the individual, as a result of mental illness or addiction, is likely to cause serious harm
91 to himself or herself or to others.

92 (i) Probable cause hearings may occur in the county where a person is hospitalized. The
93 judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons
94 hospitalized for addiction to be involuntarily hospitalized only until detoxification is accomplished;
95 and specify other alternative or modified procedures that are consistent with the purposes and
96 provisions of this article. The alternative or modified procedures shall fully and effectively
97 guarantee to the person who is the subject of the involuntary commitment proceeding and other
98 interested parties due process of the law and access to the least restrictive available treatment
99 needed to prevent serious harm to self or others.

100 (j)(1) If the magistrate, mental hygiene commissioner or circuit court judge at a probable
101 cause hearing or at a final commitment hearing held pursuant to the provisions of this article finds
102 that the individual, as a result of mental illness or addiction, is likely to cause serious harm to
103 himself, herself or others and because of mental illness or addiction requires treatment, the
104 magistrate, mental hygiene commissioner or circuit court judge may consider evidence on the

105 question of whether the individual's circumstances make him or her amenable to outpatient
106 treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.
107 The agreement is to be in writing and approved by the individual, his or her counsel and the
108 magistrate, mental hygiene commissioner or circuit court judge.

109 (2) If the magistrate, mental hygiene commissioner or circuit court judge determines that
110 appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the
111 individual may be released to outpatient treatment upon the terms and conditions of the voluntary
112 treatment agreement. The failure of an individual released to outpatient treatment pursuant to a
113 voluntary treatment agreement to comply with the terms of the voluntary treatment agreement
114 constitutes evidence that outpatient treatment is insufficient. After a hearing before a magistrate,
115 mental hygiene commissioner or circuit judge on the issue of whether or not the individual failed
116 or refused to comply with the terms and conditions of the voluntary treatment agreement and,
117 whether the individual as a result of mental illness or addiction remains likely to cause serious
118 harm to himself, herself or others, the entry of an order requiring involuntary hospitalization
119 pursuant to the provisions of this article may be entered.

120 (3) In the event a person released pursuant to a voluntary treatment agreement is unable
121 to pay for the outpatient treatment and has no applicable insurance coverage, including, but not
122 limited to, private insurance or Medicaid, the secretary may transfer funds for the purpose of
123 reimbursing community providers for services provided on an outpatient basis for individuals for
124 whom payment for treatment is the responsibility of the department. The department may not
125 authorize payment of outpatient services for an individual subject to a voluntary treatment
126 agreement in an amount in excess of the cost of involuntary hospitalization of the individual.

127 (4) The secretary shall establish and maintain fee schedules for outpatient treatment
128 provided in lieu of involuntary hospitalization.

129 (5) Nothing in the provisions of this article regarding release pursuant to a voluntary
130 treatment agreement or convalescent status may be construed as creating a right to receive

131 outpatient mental health services or treatment or as obligating any person or agency to provide
132 outpatient services or treatment.

133 (6) Time limitations set forth in this article relating to periods of involuntary commitment to
134 a behavioral health facility for hospitalization do not apply to release pursuant to the terms of a
135 voluntary treatment agreement.

136 (7) Release pursuant to a voluntary treatment agreement may not be for a period of more
137 than six months if the individual has not been found to be involuntarily committed during the
138 previous two years and for a period of no more than two years if the individual has been
139 involuntarily committed during the preceding two years.

140 (8) If in any proceeding held pursuant to this article the individual objects to the issuance
141 or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit
142 judge, magistrate or mental hygiene commissioner may not enter an order directing treatment
143 pursuant to a voluntary treatment agreement.

144 (9) If involuntary commitment with release pursuant to a voluntary treatment agreement is
145 ordered, the individual subject to the order may, upon request during the period the order is in
146 effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual
147 may seek to have the order canceled or modified.

148 (10) Nothing in this section affects the appellate and habeas corpus rights of any individual
149 subject to any commitment order.

150 (k) If the certifying physician or psychologist determines that a person requires involuntary
151 hospitalization for an addiction to a substance which, due to the degree of addiction, creates a
152 reasonable likelihood that withdrawal or detoxification from the substance of addiction will cause
153 significant medical complications, the person certifying the individual shall recommend that the
154 individual be closely monitored for possible medical complications. If the magistrate, mental
155 hygiene commissioner or circuit court judge presiding orders involuntary hospitalization, he or she
156 shall include a recommendation that the individual be closely monitored in the order of

157 commitment.

158 (l) The Supreme Court of Appeals and the secretary shall specifically develop and propose
159 a statewide system for evaluation and adjudication of mental hygiene petitions which shall include
160 payment schedules and recommendations regarding funding sources. Additionally, the secretary
161 shall also immediately seek reciprocal agreements with officials in contiguous states to develop
162 interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-
163 state residents found in West Virginia and who are in need of mental hygiene services.

§27-16-4. Admission under involuntary hospitalization for examination; hearing; release.

1 (a) Admission to a behavioral health facility for examination. -- Any individual may be
2 admitted to a behavioral health facility for examination and treatment upon entry of an order
3 finding probable cause as provided in this article. The finding of probable cause shall be based
4 upon a certification by a physician, psychologist, licensed independent clinical social worker
5 practicing in compliance with the provisions of §30-30-1 et seq. of this code or an advanced
6 practice registered nurse with psychiatric certification practicing in compliance with §30-7-1 et
7 seq. of this code following an examination of the individual which concluded that the individual is
8 mentally ill or addicted and as a result of such mental illness or addiction, is likely to cause serious
9 harm to himself, herself or to others if not immediately restrained. The opinions offered by an
10 independent clinical social worker or an advanced practice registered nurse with psychiatric
11 certification must be within their particular areas of expertise, as recognized by the order of the
12 authorizing court.

13 (b) Three-day time limitation on examination. -- If the examination does not take place
14 within three days from the date the individual is taken into custody, the individual shall be released.
15 If the examination reveals that the individual is not mentally ill or addicted, the individual shall be
16 released.

17 (c) Three-day time limitation on certification. -- The certification required in subsection (a)
18 of this section shall be valid for three days. Any individual with respect to whom the certification

19 has been issued may not be admitted on the basis of the certification at any time after the
20 expiration of three days from the date of the examination.

21 (d) Findings and conclusions required for certification. -- A certification pursuant to this
22 section must include findings and conclusions of the mental examination, the date, time and place
23 of the examination and the facts upon which the conclusion that involuntary commitment is
24 necessary is based.

25 (e) Notice requirements. -- When an individual is admitted to a behavioral health facility
26 pursuant to the provisions of this section, the chief medical officer of the facility shall immediately
27 give notice of the individual's admission to the individual's spouse, if any, and one of the
28 individual's parents or guardians or, if there is no spouse and are no parents or guardians, to one
29 of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given
30 to the community behavioral health facility, if any, having jurisdiction in the county of the
31 individual's residence. The notices other than to the community behavioral health facility shall be
32 in writing and shall be transmitted to the person or persons at his, her or their last known address
33 by certified mail, return receipt requested.

34 (f) Five-day time limitation for examination and certification at behavioral health facility. --
35 After the individual's admission to a behavioral health facility, he or she may not be detained more
36 than five days, excluding Sundays and holidays, unless, within the period, the individual is
37 examined by a staff physician and the physician certifies that in his or her opinion the patient is
38 mentally ill or addicted and is likely to injure himself, herself or others if allowed to be at liberty.

39 (g) Fifteen-day time limitation for institution of final commitment proceedings. -- If, in the
40 opinion of the examining physician, the patient is mentally ill or addicted and because of the
41 mental illness or addiction is likely to injure himself, herself or others if allowed to be at liberty, the
42 chief medical officer shall, within fifteen days from the date of admission, institute final
43 commitment proceedings as provided in this article. If the proceedings are not instituted within
44 such fifteen-day period, the patient shall be immediately released. After the request for hearing is

45 filed, the hearing may not be canceled on the basis that the individual has become a voluntary
46 patient unless the mental hygiene commissioner concurs in the motion for cancellation of the
47 hearing.

48 (h) *Thirty-day time limitation for conclusion of all proceedings.* -- If all proceedings as
49 provided in this chapter are not completed within thirty days from the date of institution of the
50 proceedings, the patient shall be immediately released.

§27-16-5. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.* -- Except as provided in §27-16-4 of this code, no individual
2 may be involuntarily committed to a behavioral health facility except by order entered of record.
3 The order may be entered at any time by the circuit court of the county in which the person resides
4 or was found, or if the individual is hospitalized in a behavioral health facility located in a county
5 other than where he or she resides or was found, in the county of the behavioral health facility.
6 The order may be entered only after a full hearing on issues relating to the necessity of committing
7 an individual to a behavioral health facility. If the individual objects to the hearing being held in
8 the county where the behavioral health facility is located, the hearing shall be conducted in the
9 county of the individual's residence.

10 (b) *How final commitment proceedings are commenced.* -- Final commitment proceedings
11 for an individual may be commenced by the filing of a written application under oath by an adult
12 person having personal knowledge of the facts of the case. The certificate or affidavit is filed with
13 the clerk of the circuit court or mental hygiene commissioner of the county where the individual is
14 a resident or where he or she may be found or the county of a behavioral health facility if he or
15 she is hospitalized in a behavioral health facility located in a county other than where he or she
16 resides or may be found.

17 (c) *Oath; contents of application; who may inspect application; when application cannot*
18 *be filed.* --

19 (1) The person making the application shall do so under oath.

20 (2) The application shall contain statements by the applicant that the individual is likely to
21 cause serious harm to self or others due to what the applicant believes are symptoms of mental
22 illness or addiction. The applicant shall state in detail the recent overt acts upon which the belief
23 is based.

24 (3) The written application, certificate, affidavit and any warrants issued pursuant thereto,
25 including any related documents, filed with a circuit court, mental hygiene commissioner or
26 designated magistrate for the involuntary hospitalization of an individual are not open to inspection
27 by any person other than the individual, unless authorized by the individual or his or her legal
28 representative or by order of the circuit court. The records may not be published unless authorized
29 by the individual or his or her legal representative. Disclosure of these records may, however, be
30 made by the clerk, circuit court, mental hygiene commissioner or designated magistrate to provide
31 notice to the Federal National Instant Criminal Background Check System established pursuant
32 to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central
33 state mental health registry, in accordance with §61-7A-1 et seq. of this code. Disclosure may
34 also be made to the prosecuting attorney and reviewing court in an action brought by the individual
35 pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

36 (4) Applications may not be accepted for individuals who only have epilepsy, a mental
37 deficiency or senility.

38 (d) Certificate filed with application; contents of certificate; affidavit by applicant in place
39 of certificate. --

40 (1) The applicant shall file with his or her application the certificate of a physician or a
41 psychologist stating that in his or her opinion the individual is mentally ill or addicted and that
42 because of the mental illness or addiction, the individual is likely to cause serious harm to self or
43 others if allowed to remain at liberty and, therefore, should be hospitalized. The certificate shall
44 state in detail the recent overt acts on which the conclusion is based.

45 (2) A certificate is not necessary when an affidavit is filed by the applicant showing facts

46 and the individual has refused to submit to examination by a physician or a psychologist.

47 (e) Notice requirements; eight days notice required. -- Upon receipt of an application, the
48 mental hygiene commissioner or circuit court shall review the application and if it is determined
49 that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a
50 date for and have the clerk of the circuit court give notice of the hearing:

51 (1) To the individual;

52 (2) To the applicant or applicants;

53 (3) To the individual's spouse, one of the parents or guardians, or, if the individual does
54 not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the
55 next of kin is not the applicant;

56 (4) To the mental health authorities serving the area;

57 (5) To the circuit court in the county of the individual's residence if the hearing is to be held
58 in a county other than that of the individual's residence; and

59 (6) To the prosecuting attorney of the county in which the hearing is to be held.

60 (f)(1) The notice shall be served on the individual by personal service of process not less
61 than eight days prior to the date of the hearing and shall specify:

62 (A) The nature of the charges against the individual;

63 (B) The facts underlying and supporting the application of involuntary commitment;

64 (C) The right to have counsel appointed;

65 (D) The right to consult with and be represented by counsel at every stage of the
66 proceedings; and

67 (E) The time and place of the hearing.

68 (2) The notice to the individual's spouse, parents or parent or guardian, the individual's
69 adult next of kin or to the circuit court in the county of the individual's residence may be by personal
70 service of process or by certified or registered mail, return receipt requested, and shall state the
71 time and place of the hearing.

72 (g) Examination of individual by court-appointed physician or psychologist; custody for
73 examination; dismissal of proceedings. --

74 (1) Except as provided in subdivision (3) of this subsection, within a reasonable time after
75 notice of the commencement of final commitment proceedings is given, the circuit court or mental
76 hygiene commissioner shall appoint a physician or psychologist to examine the individual and
77 report to the circuit court or mental hygiene commissioner his or her findings as to the mental
78 condition or addiction of the individual and the likelihood of causing serious harm to self or others.

79 (2) If the designated physician or psychologist reports to the circuit court or mental hygiene
80 commissioner that the individual has refused to submit to an examination, the circuit court or
81 mental hygiene commissioner shall order him or her to submit to the examination. The circuit court
82 or mental hygiene commissioner may direct that the individual be detained or taken into custody
83 for the purpose of an immediate examination by the designated physician or psychologist. All
84 such orders shall be directed to the sheriff of the county or other appropriate law-enforcement
85 officer. After the examination has been completed, the individual shall be released from custody
86 unless proceedings are instituted pursuant to §27-16-4 of this code.

87 (3) If the reports of the appointed physician or psychologist do not confirm that the
88 individual is mentally ill or addicted and might be harmful to self or others, then the proceedings
89 for involuntary hospitalization shall be dismissed.

90 (h) Rights of the individual at the final commitment hearing. --

91 (1) The individual shall be present at the final commitment hearing and he or she, the
92 applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify
93 and to present and cross-examine witnesses.

94 (2) In the event the individual has not retained counsel, the court or mental hygiene
95 commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall
96 inform the individual of the name, address and telephone number of his or her appointed counsel.

97 (3) The individual has the right to have an examination by an independent expert of his or

98 her choice and to present testimony from the expert as a medical witness on his or her behalf.

99 The cost of the independent expert is paid by the individual unless he or she is indigent.

100 (4) The individual may not be compelled to be a witness against himself or herself.

101 (i) Duties of counsel representing individual; payment of counsel representing indigent. -

102 (1) Counsel representing an individual shall conduct a timely interview, make investigation
103 and secure appropriate witnesses, be present at the hearing and protect the interests of the
104 individual.

105 (2) Counsel representing an individual is entitled to copies of all medical reports,
106 psychiatric or otherwise.

107 (3) The circuit court, by order of record, may allow the attorney a reasonable fee not to
108 exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 et
109 seq. of this code.

110 (j) Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing. --

111 (1) The circuit court or mental hygiene commissioner shall hear evidence from all
112 interested parties in chamber including testimony from representatives of the community
113 behavioral health facility.

114 (2) The circuit court or mental hygiene commissioner shall receive all relevant and material
115 evidence which may be offered.

116 (3) The circuit court or mental hygiene commissioner is bound by the rules of evidence
117 promulgated by the Supreme Court of Appeals except that statements made to physicians or
118 psychologists by the individual may be admitted into evidence by the physician's or psychologist's
119 testimony, notwithstanding failure to inform the individual that this statement may be used against
120 him or her. A psychologist or physician testifying shall bring all records pertaining to the individual
121 to the hearing. The medical evidence obtained pursuant to an examination under this section, or
122 §27-16-3 or §27-16-4 of this code, is not privileged information for purposes of a hearing pursuant
123 to this section.

124 (4) All final commitment proceedings shall be reported or recorded, whether before the
125 circuit court or mental hygiene commissioner, and a transcript made available to the individual,
126 his or her counsel or the prosecuting attorney within thirty days if requested for the purpose of
127 further proceedings. In any case where an indigent person intends to pursue further proceedings,
128 the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish
129 a transcript of the hearings.

130 (k) Requisite findings by the court. --

131 (1) Upon completion of the final commitment hearing and the evidence presented in the
132 hearing, the circuit court or mental hygiene commissioner shall make findings as to the following:

133 (A) Whether the individual is mentally ill or addicted;

134 (B) Whether, because of illness or addiction, the individual is likely to cause serious harm
135 to self or others if allowed to remain at liberty;

136 (C) Whether the individual is a resident of the county in which the hearing is held or
137 currently is a patient at a behavioral health facility in the county; and

138 (D) Whether there is a less restrictive alternative than commitment appropriate for the
139 individual. The burden of proof of the lack of a less restrictive alternative than commitment is on
140 the person or persons seeking the commitment of the individual.

141 (2) The findings of fact shall be incorporated into the order entered by the circuit court and
142 must be based upon clear, cogent and convincing proof.

143 (l) Orders issued pursuant to final commitment hearing; entry of order; change in order of
144 court; expiration of order. --

145 (1) Upon the requisite findings, the circuit court may order the individual to a behavioral
146 health facility for an indeterminate period or for a temporary observatory period not exceeding six
147 months.

148 (2) The individual may not be detained in a behavioral health facility for a period in excess
149 of ten days after a final commitment hearing pursuant to this section unless an order has been

150 entered and received by the facility.

151 (3) If the order pursuant to a final commitment hearing is for a temporary observation
152 period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration
153 of such period, on the basis of a report by the chief medical officer of the behavioral health facility
154 in which, the patient is confined, hold another hearing pursuant to the terms of this section. This
155 hearing shall be in the same manner as the hearing was held as if it were an original petition for
156 involuntary hospitalization to determine whether the original order for a temporary observation
157 period should be modified or changed to an order of indeterminate hospitalization of the patient.
158 At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the
159 patient or dismissal of the proceedings.

160 (4) An order for an indeterminate period expires of its own terms at the expiration of two
161 years from the date of the last order of commitment unless prior to the expiration, the department,
162 upon findings based on an examination of the patient by a physician or a psychologist, extends
163 the order for indeterminate hospitalization. If the patient or his or her counsel requests a hearing,
164 a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county
165 as provided in subsection (a) of this section.

166 (m) *Dismissal of proceedings.* -- If the circuit court or mental hygiene commissioner finds
167 that the individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit
168 court or mental hygiene commissioner finds that the individual is mentally ill or addicted but is not,
169 because of the illness or addiction, likely to cause serious harm to self or others if allowed to
170 remain at liberty, the proceedings shall be dismissed.

171 (n) *Immediate notification of order of hospitalization.* -- The clerk of the circuit court in
172 which an order directing hospitalization is entered, if not in the county of the individual's residence,
173 shall immediately upon entry of the order forward a certified copy of the order to the clerk of the
174 circuit court of the county of which the individual is a resident.

175 (o) *Consideration of transcript by circuit court of county of individual's residence; order of*

176 hospitalization; execution of order. --

177 (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization
178 should be ordered but finds that the individual is not a resident of the county in which the hearing
179 is held and the individual is not currently a resident of a behavioral health facility, a transcript of
180 the evidence adduced at the final commitment hearing of the individual, certified by the clerk of
181 the circuit court, shall forthwith be forwarded to the clerk of the circuit court of the county of which
182 the individual is a resident. The clerk shall immediately present the transcript to the circuit court
183 or mental hygiene commissioner of the county.

184 (2) If the circuit court or mental hygiene commissioner of the county of the residence of
185 the individual is satisfied from the evidence contained in the transcript that the individual should
186 be hospitalized as determined by the standard set forth above, the circuit court shall order the
187 appropriate hospitalization as though the individual had been brought before the circuit court or
188 its mental hygiene commissioner in the first instance.

189 (3) This order shall be transmitted forthwith to the clerk of the circuit court of the county in
190 which the hearing was held who shall execute the order promptly.

191 (p) Order of custody to responsible person. -- In lieu of ordering the patient to a behavioral
192 health facility, the circuit court may order the individual delivered to a responsible person who will
193 agree to take care of the individual and the circuit court may take from the responsible person a
194 bond in an amount to be determined by the circuit court with condition to restrain and take proper
195 care of the individual until further order of the court.

196 (q) Individual not a resident of this state. -- If the individual found to be mentally ill or
197 addicted by the circuit court or mental hygiene commissioner is a resident of another state, this
198 information shall be forthwith given to the secretary, or to his or her designee, who shall make
199 appropriate arrangements for transfer of the individual to the state of his or her residence
200 conditioned on the agreement of the individual except as qualified by the interstate compact on
201 mental health.

202 (r) Report to the Secretary of the Department of Health and Compliance. --

203 (1) The chief medical officer of a behavioral health facility admitting a patient pursuant to
204 proceedings under this section shall forthwith make a report of the admission to the secretary, or
205 to his or her designee.

206 (2) Whenever an individual is released from custody due to the failure of an employee of
207 a behavioral health facility to comply with the time requirements of this article, the chief medical
208 officer of the behavioral health facility shall forthwith, after the release of the individual, make a
209 report to the secretary, or to his or her designee, of the failure to comply.

210 (s) Payment of some expenses by the state; mental hygiene fund established; expenses
211 paid by the county commission. --

212 (1) The state shall pay the commissioner's fee and the court reporter fees that are not paid
213 and reimbursed pursuant to §29-21-1 et seq. of this code out of a special fund to be established
214 within the Supreme Court of Appeals to be known as the "Mental Hygiene Fund".

215 (2) The county commission shall pay out of the county treasury all other expenses incurred
216 in the hearings conducted pursuant to the provisions of this article whether or not hospitalization
217 is ordered, including any fee allowed by the circuit court by order entered of record for any
218 physician, psychologist and witness called by the indigent individual. The copying and mailing
219 costs associated with providing notice of the final commitment hearing and issuance of the final
220 order shall be paid by the county where the involuntary commitment petition was initially filed.

§27-16-6. Judicial review.

1 (a) Any individual adversely affected by any order of commitment entered by the circuit
2 court pursuant to this article may seek review thereof by appeal to the state Supreme Court of
3 Appeals and jurisdiction is hereby conferred upon such court to hear and entertain such appeals
4 upon application made therefor in the manner and within the time provided by law for civil appeals
5 generally.

6 (b) This section shall not be construed to in any way limit or precondition the right to seek

7 release of such individual by habeas corpus.

§27-16-7. Hospitalization by agency of the United States.

1 (a) If an individual ordered to be hospitalized pursuant to §27-16-5 of this code is eligible
2 for hospital care or treatment by any agency of the United States, then, upon receipt of a certificate
3 from such agency showing that facilities are available and that the individual is eligible for care or
4 treatment therein, the circuit court or mental hygiene commissioner may order him or her to be
5 placed in the custody of such agency for hospitalization.

6 (b) When any such individual is admitted pursuant to the order of such circuit court or
7 mental hygiene commissioner to any hospital or institution established, maintained or operated
8 by any agency of the United States within or without the state, he or she shall be subject to the
9 rules and regulations of such agency.

10 (c) The chief officer of any hospital or institution operated by such agency and in which
11 the individual is so hospitalized shall, with respect to such individual, be vested with the same
12 powers as the chief medical officers of behavioral health facilities or the commissioner within this
13 state with respect to detention, custody, transfer, conditional release or discharge of patients.
14 Jurisdiction is retained in the appropriate circuit court or mental hygiene commissioner of this
15 state at any time to inquire into the mental condition of an individual so hospitalized, and to
16 determine the necessity for continuance of his or her hospitalization, and every order of
17 hospitalization issued pursuant to this section is so conditioned.

§27-16-8. Rights of patients.

1 (a) No person may be deprived of any civil right solely by reason of his or her receipt of
2 services for mental illness, intellectual disability or addiction, nor does the receipt of the services
3 modify or vary any civil right of the person, including, but not limited to, civil service status and
4 appointment, the right to register for and to vote at elections, the right to acquire and to dispose
5 of property, the right to execute instruments or rights relating to the granting, forfeiture or denial
6 of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged

7 incompetent pursuant to this chapter and who has not been restored to legal competency may be
8 deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve
9 the patient of legal capacity.

10 (b) Each patient of a behavioral health facility receiving services from the facility shall
11 receive care and treatment that is suited to his or her needs and administered in a skillful, safe
12 and humane manner with full respect for his or her dignity and personal integrity.

13 (c) Every patient has the following rights regardless of adjudication of incompetency:

14 (1) Treatment by trained personnel;

15 (2) Careful and periodic psychiatric reevaluation no less frequently than once every three
16 months;

17 (3) Periodic physical examination by a physician no less frequently than once every six
18 months; and

19 (4) Treatment based on appropriate examination and diagnosis by a staff member
20 operating within the scope of his or her professional license.

21 (d) The chief medical officer shall cause to be developed within the clinical record of each
22 patient a written treatment plan based on initial medical and psychiatric examination not later than
23 seven days after he or she is admitted for treatment. The treatment plan shall be updated
24 periodically, consistent with reevaluation of the patient. Failure to accord the patient the requisite
25 periodic examinations or treatment plan and reevaluations entitles the patient to release.

26 (e) A clinical record shall be maintained at a behavioral health facility for each patient
27 treated by the facility. The record shall contain information on all matters relating to the admission,
28 legal status, care and treatment of the patient and shall include all pertinent documents relating
29 to the patient. Specifically, the record shall contain results of periodic examinations, individualized
30 treatment programs, evaluations and reevaluations, orders for treatment, orders for application
31 for mechanical restraint and accident reports, all signed by the personnel involved.

32 (f) Every patient, upon his or her admission to a hospital and at any other reasonable time,

33 shall be given a copy of the rights afforded by this section.

34 (g) The secretary shall propose rules for legislative approval in accordance with the
35 provisions of §29A-3-1 et seq. of this code to protect the personal rights of patients not
36 inconsistent with this section.

§27-16-9. Transportation for the mentally ill or substance user.

1 (a)(1) Whenever transportation of an individual is required pursuant to the provisions of
2 this chapter, it shall be the duty of the sheriff to provide immediate transportation to or from the
3 appropriate behavioral health facility or state hospital.

4 (2) Where hospitalization occurs pursuant to §27-15-1 et seq. of this code, the sheriff may
5 permit, upon the written request of a person having proper interest in the individual's
6 hospitalization, for the interested person to arrange for the individual's transportation to the
7 behavioral health facility or state hospital if the sheriff determines that such means are suitable
8 given the individual's condition.

9 (b) Upon written agreement between the county commission on behalf of the sheriff and
10 the directors of the local community mental health center and emergency medical services, an
11 alternative transportation program may be arranged. The agreement shall clearly define the
12 responsibilities of each of the parties, the requirements for program participation and the persons
13 bearing ultimate responsibility for the individual's safety and well-being.

14 (c)(1) Sheriffs and municipal governments are hereby authorized to enter into written
15 agreements whereby certified municipal law-enforcement officers may perform the duties of the
16 sheriff as described in this article. The agreement shall determine jurisdiction, responsibility of
17 costs, training related to the performance of these duties and all other necessary requirements.
18 The agreement shall be approved by the county commission and circuit court of the county in
19 which the agreement is made.

20 (2) For purposes of this subsection, "certified municipal law-enforcement officer" means
21 any duly authorized member of a municipal law-enforcement agency who is empowered to

22 maintain public peace and order, make arrests and enforce the laws of this state or any political
23 subdivision thereof, other than parking ordinances, and who is currently certified as a law-
24 enforcement officer pursuant to §30-29-1 et seq. of this code.

25 (d) Nothing in this section is intended to alter security responsibilities for the patient by the
26 sheriff unless mutually agreed upon as provided in subsection (c) of this section.

ARTICLE 17. 15. OFFENSES.

§27-17-1. Malicious making of medical certificate or complaint as to mental condition.

1 Any physician who signs a certificate respecting the mental condition of any person
2 without having made the examination as provided by this chapter, or makes any statement in any
3 such certificate maliciously for the purpose of having such person declared mentally ill,
4 intellectually disabled or an inebriate, and any person who maliciously makes application to any
5 circuit court or mental hygiene commission for the purpose of having another person declared
6 mentally ill, intellectually disabled, or an inebriate, is guilty of a misdemeanor and, upon conviction
7 thereof, shall be fined not exceeding \$500, or imprisoned not exceeding one year, or both fined
8 and imprisoned at the discretion of the court.

§27-17-2. Trespass on grounds of state hospitals.

1 The enclosed premises and the lands adjoining the same belonging to any one of the state
2 hospitals are declared private grounds. If any person be found on the premises or grounds without
3 authority, permission or good excuse, he or she shall be deemed a trespasser, and, on conviction
4 thereof, shall be fined not exceeding \$25; and if it shall appear that he or she was thereon for any
5 unlawful or immoral purpose, in addition to being fined, he or she shall be imprisoned not
6 exceeding sixty days.

§27-17-3. Miscellaneous offenses.

1 If any person shall:

2 (1) Entice, or attempt to entice, any patient from any state hospital who has been legally

3 committed thereto; or

4 (2) Shall counsel, cause, influence or assist, or attempt to do so, any such patient to
5 escape; or

6 (3) Attempt to escape therefrom; or

7 (4) Harbor or conceal any such patient who has escaped therefrom; or

8 (5) Shall, without the permission of the Chief Executive Officer of any such hospital, give
9 or sell to any such patient, whether on the premises thereof or elsewhere, any money, firearms,
10 drugs, cigarettes, tobacco, or any other article whatsoever; or

11 (6) Shall receive from the hands of any such patient anything of value, whether belonging
12 to the state or not; or

13 (7) Shall cause or influence, or attempt to cause or influence, any such patient to violate
14 any rule or to rebel against the government or discipline of such hospital; or

15 (8) Shall tease, pester, annoy, or molest any such patient,

16 He or she shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not
17 less than ten nor more than \$100, or imprisoned not exceeding six months, or, in the discretion
18 of the court, both fined and imprisoned.

19 (b) If any person shall aid or abet the commission of any of the foregoing offenses or aid
20 or abet an attempt to commit the same, he or she shall be guilty of the same as if he or she were
21 the principal, and be punished as above provided.

22 (c) In the trial of an indictment for committing any of the offenses set forth in this section,
23 the accused may be found guilty of an attempt to commit the same, or of aiding or abetting another
24 in committing or in an attempt to commit the same.

25 (d) If any person, not her spouse, shall have sexual intercourse with any female patient
26 who is a patient of any of said state hospitals, he shall be guilty of a felony, and, on conviction
27 thereof, shall be confined in the penitentiary not less than ten nor more than fifteen years. If such
28 female patient be under sixteen years of age, he shall be imprisoned not less than ten nor more

29 than twenty years.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-4. Definitions.

1 As used in this article:

2 (1) "Board" means the West Virginia Board of Medicine established in §3-3-5 of this code.

3 (2) "Commissioner" means the Commissioner for the Bureau for Public Health or his or
4 her designee, which officer or designee shall be a physician and shall act as secretary of the
5 board and shall carry out any and all responsibilities assigned in this article to the secretary of the
6 board.

7 ~~(2)~~ (3) "Medical peer review committee" means a committee of, or appointed by, a state
8 or local professional medical society, or a committee of, or appointed by, a medical staff of a
9 licensed hospital, long-term care facility or other health care facility, or any health care peer review
10 organization as defined in §30-3C-1 of this code, or any other organization of professionals in this
11 state formed pursuant to state or federal law and authorized to evaluate medical and health care
12 services.

13 ~~(3)~~ (4) "Practice of medicine and surgery" means the diagnosis or treatment of, or
14 operation or prescription for, any human disease, pain, injury, deformity or other physical or
15 mental condition. "Surgery" includes the use on humans of lasers, ionizing radiation, pulsed light
16 and radiofrequency devices. The provisions of this section do not apply to any person who is a
17 duly licensed health care provider under other pertinent provisions of this code and who is acting
18 within the scope of his or her license.

19 ~~(4)~~ (5) "Practice of podiatry" means the examination, diagnosis, treatment, prevention and
20 care of conditions and functions of the human foot and ankle by medical, surgical and other
21 scientific knowledge and methods; with surgical treatment of the ankle authorized only when a

22 podiatrist has been granted privileges to perform ankle surgery by a hospital's medical staff
23 credentialing committee based on the training and experience of the podiatrist; and medical and
24 surgical treatment of warts and other dermatological lesions of the hand which similarly occur in
25 the foot. When a podiatrist uses other than local anesthesia, in surgical treatment of the foot, the
26 anesthesia must be administered by, or under the direction of, an anesthesiologist or certified
27 registered nurse anesthetist authorized under the State of West Virginia to administer anesthesia.
28 A medical evaluation shall be made by a physician of every patient prior to the administration of
29 other than local anesthesia.

30 ~~(5) "State health officer" means the commissioner for the Bureau for Public Health or his~~
31 ~~or her designee, which officer or designee shall be a physician and shall act as secretary of the~~
32 ~~board and shall carry out any and all responsibilities assigned in this article to the secretary of the~~
33 ~~board.~~

**§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and
terms of members; vacancies; removal.**

1 The West Virginia Board of Medicine has assumed, carried on and succeeded to all the
2 duties, rights, powers, obligations and liabilities heretofore belonging to or exercised by the
3 Medical Licensing Board of West Virginia. All the rules, orders, rulings, licenses, certificates,
4 permits and other acts and undertakings of the medical licensing board of West Virginia as
5 heretofore constituted have continued as those of the West Virginia Board of Medicine until they
6 expired or were amended, altered or revoked. The board remains the sole authority for the
7 issuance of licenses to practice medicine and surgery and to practice podiatry and to practice as
8 physician assistants in this state under the supervision of physicians licensed under this article.
9 The board shall continue to be a regulatory and disciplinary body for the practice of medicine and
10 surgery and the practice of podiatry and for physician assistants in this state.

11 The board shall consist of sixteen members. One member shall be the ~~state health officer~~
12 commissioner ex officio, with the right to vote as a member of the board. The other fifteen

13 members shall be appointed by the Governor, with the advice and consent of the Senate. Eight
14 of the members shall be appointed from among individuals holding the degree of doctor of
15 medicine and two shall hold the degree of doctor of podiatric medicine. Two members shall be
16 physician assistants licensed by the board. Each of these members must be duly licensed to
17 practice his or her profession in this state on the date of appointment and must have been licensed
18 and actively practicing that profession for at least five years immediately preceding the date of
19 appointment. Three lay members shall be appointed to represent health care consumers. Neither
20 the lay members nor any person of the lay members' immediate families shall be a provider of or
21 be employed by a provider of health care services. The ~~state health officer's~~ commissioner's term
22 shall continue for the period that he or she holds office as ~~state health officer~~ commissioner. Each
23 other member of the board shall be appointed to serve a term of five years: *Provided*, That the
24 members of the Board of Medicine holding appointments on the effective date of this section shall
25 continue to serve as members of the Board of Medicine until the expiration of their term unless
26 sooner removed. Each term shall begin on October 1 of the applicable year and a member may
27 not be appointed to more than two consecutive full terms on the board.

28 A person is not eligible for membership on the board who is a member of any political
29 party executive committee or, with the exception of the ~~state health officer~~ commissioner, who
30 holds any public office or public employment under the federal government or under the
31 government of this state or any political subdivision thereof.

32 In making appointments to the board, the Governor shall, so far as practicable, select the
33 members from different geographical sections of the state. When a vacancy on the board occurs
34 and less than one year remains in the unexpired term, the appointee shall be eligible to serve the
35 remainder of the unexpired term and two consecutive full terms on the board.

36 No member may be removed from office by the Governor except for official misconduct,
37 incompetence, neglect of duty or gross immorality: *Provided*, That the expiration, surrender or
38 revocation of the professional license by the board of a member of the board shall cause the

39 membership to immediately and automatically terminate.

§30-3-8. ~~State health officer~~ Commissioner to act as secretary of the board.

1 The ~~state health officer~~ commissioner, in addition to being a member of the board, shall
2 act as its secretary. He or she shall, together with the president of the board, sign all licenses,
3 reports, orders and other documents that may be required by the board in the performance of its
4 duties.

ARTICLE 16. CHIROPRACTORS.

**§30-16-19. Duty of chiropractor to observe health rules; reports of ~~health officer~~
commissioner and local registrar of vital statistics.**

1 Doctors of chiropractic shall observe and are subject to all state and municipal rules in
2 regard to the control of infectious diseases, and to any and all other matters pertaining to public
3 health. They shall report to the ~~public health officer~~ commissioner in the manner required by law.
4 It is the duty of each doctor of chiropractic in this state to report to the registrar of vital statistics
5 of his or her magisterial district, within ten days of its occurrence, any death which may come
6 under his or her supervision, with a certificate of the cause of death and correlative facts as may
7 be at that time required by the ~~division of health~~ Department of Health and Compliance.

CHAPTER 31. CORPORATIONS.

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT
COUNCIL.**

§31-15A-2. Definitions.

1 For purposes of this article:

2 (a) "Bond" or "infrastructure revenue bond" means a revenue bond, note, or other
3 obligation issued by the water development authority pursuant to this article, including bonds to
4 refund such bonds and notes to renew such notes, and notes in anticipation of and payable from
5 the proceeds of such bonds.

6 (b) "Code" means the Code of West Virginia, 1931, as amended;

7 (c) "Cost" means, as applied to any project to be financed, in whole or in part, with
8 infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning,
9 acquisition, improvement and construction of the project; the cost of preliminary design and
10 analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility
11 studies, assessments, applications, approvals, submissions or clearances; the cost of preparation
12 of plans and specifications and other engineering services; the cost of acquisition of all land,
13 rights-of-way, property rights, easements, franchise rights and any other interests required for the
14 acquisition, repair, improvement or construction of the project; the cost of demolishing or removing
15 any buildings or structures on land so acquired, including the cost of acquiring any lands to which
16 buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of
17 earth, demolishing or removing any buildings or structures; the cost of constructing any buildings
18 or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery,
19 furnishings and equipment; loan or origination fees and all finance charges and interest incurred
20 prior to and during the construction and for no more than six months after completion of
21 construction; the cost of all legal services and expenses; the cost of all plans, specifications,
22 surveys and estimates of cost; all working capital and other expenses necessary or incident to
23 determining the feasibility or practicability of acquiring, repairing, improving or constructing any
24 project; the cost of placing any project in operation; and all other costs and expenses of any kind
25 or nature incurred or to be incurred by the project sponsor developing the project that are
26 reasonable and necessary for carrying out all works and undertakings necessary or incident to
27 the accomplishment of any project: *Provided*, That costs shall not include any amounts related to
28 the ongoing operations of the owner or operator, depreciation thereof or any other cost which the
29 council or the water development authority has not determined to be consistent with the purposes
30 and objectives of this article;

31 (d) "Council" means the West Virginia Infrastructure and Jobs Development Council

32 created in §31-15A-3 of this code;

33 (e) "Department of Health and Compliance" means the department created in chapter 9
34 of this code, or any successor to all or any substantial part of its powers and duties;

35 ~~(e)~~ (f) "Division of Environmental Protection" means the ~~Division~~ Department of
36 Environmental Protection established under §22-1-1 *et seq.* of this code, or any successor to all
37 or any substantial part of its powers and duties;

38 ~~(f) "Division of health" means the division of health created in §16-1-1 *et seq.* of this code,~~
39 ~~or any successor to all or any substantial part of its powers and duties;~~

40 (g) "Economic Development Authority" means the Economic Development Authority
41 established under §31-15-1 *et seq.* of this code, or any successor to all or any substantial part of
42 its powers and duties;

43 (h) "Emergency project" means a project which the council has determined: (1) Is essential
44 to the immediate economic development of an area of the state; and (2) will not likely be
45 developed in that area if construction of the project is not commenced immediately;

46 (i) "Governmental agency" means any county; municipality; watershed improvement
47 district; assessment district; soil conservation district; sanitary district; public service district;
48 drainage district; regional governmental authority and any other state governmental agency,
49 entity, political subdivision or public corporation or agency authorized to acquire, construct or
50 operate water or wastewater facilities or infrastructure projects;

51 (j) "Housing development fund" means the West Virginia Housing Development Fund
52 established under §31-18-1 *et seq.* of this code, or any successor to all or any substantial part of
53 its powers and duties;

54 (k) "Infrastructure Fund" means the West Virginia Infrastructure Fund created and
55 established in §31-15A-9 of this code;

56 (l) "Infrastructure project" means a project in the state which the council determines is
57 likely to foster and enhance economic growth and development in the area of the state in which

58 the project is developed, for commercial, industrial, community improvement or preservation or
59 other proper purposes, including, without limitation, tourism and recreational housing, land, air or
60 water transportation facilities and bridges, industrial or commercial projects and facilities, mail
61 order, warehouses, wholesale and retail sales facilities and other real and personal properties,
62 including facilities owned or leased by this state or any other project sponsor, and includes,
63 without limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition,
64 construction, improving, expanding, renovation, leasing or otherwise disposing of the project or
65 any part thereof or interest therein; and (2) preparing land for construction and making, installing
66 or constructing improvements on the land, including water or wastewater facilities or any part
67 thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads,
68 bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and
69 drainage and flood control facilities, whether on or off the site;

70 (m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all
71 amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from
72 any source for the use of all or any part of any project completed pursuant to this article; and any
73 other amounts received by the State Treasurer, council or the water development authority for
74 the purposes of this article;

75 (n) "Need of the project sponsors" means there is a public need for a project. The council
76 shall construe a population increase evidenced by the last two decennial censuses in a county in
77 which a project is proposed, as a factor supporting the conclusion that a need exists for projects
78 in that county.

79 (o) "Project" means any wastewater facility, water facility project or any combination
80 thereof, constructed or operated or to be constructed or operated by a project sponsor;

81 (p) "Project sponsor" means any governmental agency or person, or any combination
82 thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct,
83 improve or otherwise develop a project;

84 (q) "Public Service Commission" means the Public Service Commission of West Virginia
85 created and established under §24-1-3 of this code, or any successor to all or any substantial part
86 of its powers and duties;

87 (r) "Person" means any individual, corporation, partnership, association, limited liability
88 company or any other form of business organization;

89 (s) "Public utility" means any person or persons, or association of persons, however
90 associated, whether incorporated or not, including, without limitation, any governmental agency,
91 operating a wastewater facility or water facility as a public service, which is regulated by the Public
92 Service Commission as a public utility under chapter 24 of this code or which is required to file its
93 tariff with the Public Service Commission;

94 (t) "State Development Office" means the West Virginia Development Office established
95 under §5B-2-1 *et seq.* of this code, or any successor to all or any substantial part of its powers
96 and duties;

97 (u) "State infrastructure agency" means the ~~division of health, Division~~ Department of
98 Health and Compliance, Department of Environmental Protection, Housing Development Fund,
99 Public Service Commission, State Development Office, Water Development Authority, Economic
100 Development Authority and any other state agency, division, body, authority, commission,
101 instrumentality or entity which now or in the future receives applications for the funding of, and
102 provides funding or technical assistance to, the planning, acquisition, construction or improvement
103 of a project;

104 (v) "Wastewater facility" means all facilities, land and equipment used for or in connection
105 with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater,
106 including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes
107 or other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent
108 impoundment of wastewater, both surface and underground; and sanitary sewers or other
109 collection systems, whether on the surface or underground, designed to transport wastewater

110 together with the equipment and furnishings therefor or thereof and their appurtenances and
 111 systems, whether on the surface or underground including force mains and pumping facilities
 112 therefor;

113 (w) "Water development authority" means the West Virginia water development authority
 114 continued pursuant to the provisions of §22C-1-1 *et seq.* of this code, or any successor to all or
 115 any substantial part of its powers and duties; and

116 (x) "Water facility" means all facilities, land and equipment used for or in connection with
 117 the collection and/or storage of water, both surface and underground, transportation of water,
 118 storage of water, treatment of water and distribution of water all for the purpose of providing
 119 potable, sanitary water suitable for human consumption and use.

**§31-15A-3. West Virginia Infrastructure and Jobs Development Council continued;
 members of council; staff of council.**

1 (a) The West Virginia Infrastructure and Jobs Development Council is continued. The
 2 council is a governmental instrumentality of the state. The exercise by the council of the powers
 3 conferred by this article and the carrying out of its purpose and duties shall be considered and
 4 held to be, and are determined to be, essential governmental functions and for a public purpose.

5 (b) The council shall consist of thirteen members, including:

6 (1) The Governor or designee;

7 (2) The Executive Director of the Housing Development Fund or his or her designee;

8 (3) The ~~Director~~ Secretary of the ~~Division~~ Department of Environmental Protection or his
 9 or her designee;

10 (4) The Director of the Economic Development Authority or his or her designee;

11 (5) The Director of the Water Development Authority or his or her designee;

12 (6) The ~~Director of the Division of Health~~ Secretary of the Department of Health and
 13 Compliance or his or her designee;

14 (7) The Chairman of the Public Service Commission or his or her designee; and

15 (8) Six members representing the general public: *Provided*, That there shall be at least
16 one member representing the general public from each congressional district. No more than one
17 member representing the general public may be a resident of the same county.

18 (c) The Governor shall appoint the public members of the council who shall serve three-
19 year staggered terms.

20 (d) The Commissioner of the Division of Highways, the Executive Director of the State Rail
21 Authority, two members of the West Virginia Senate, two members of the West Virginia House of
22 Delegates, the Chancellor of the Higher Education Policy Commission and the Chancellor of the
23 West Virginia Council for Community and Technical College Education serve as advisory
24 members of the council. The advisory members shall be ex officio, nonvoting members of the
25 council.

26 (e) The Governor shall appoint the legislative members of the council: *Provided*, That no
27 more than three of the legislative members may be of the same political party.

28 (f) The Governor or designee shall serve as chairman and the council shall annually
29 appoint a vice chairperson and shall appoint a secretary, who need not be a member of the council
30 and who shall keep records of its proceedings. Seven members of the council shall constitute a
31 quorum and the affirmative vote of at least the majority of those members present shall be
32 necessary for any action taken by vote of the council. A vacancy in the membership of the council
33 does not impair the rights of a quorum by such vote to exercise all the rights and perform all the
34 duties of the council.

35 (g) A member of the council who serves by virtue of his or her office does not receive
36 compensation or reimbursement of expenses for serving as a member. The public members are
37 reimbursed for actual expenses incurred in the service of the council in a manner consistent with
38 guidelines of the travel management office of the Department of Administration.

39 (h) The council meets at least monthly to review projects and infrastructure projects
40 requesting funding assistance and otherwise to conduct its business and may meet more

41 frequently if necessary. Notwithstanding any other provision of this article to the contrary, the
 42 Economic Development Authority is not subject to council review with regard to any action taken
 43 pursuant to the authority established in §31-15-1 *et seq.* of this code. The Governor's Civil
 44 Contingent Fund is not subject to council review with regard to projects or infrastructure projects
 45 funded through the Governor's Civil Contingent Fund.

46 (i) The Water Development Authority shall provide office space for the council and each
 47 governmental agency represented on the council shall provide staff support for the council in the
 48 manner determined appropriate by the council.

49 (j) The council shall invite to each meeting one or more representatives of the United
 50 States Department of Agriculture, Rural Economic Community Development, the United States
 51 Economic Development Agency and the United States Army Corps of Engineers or any
 52 successors thereto. The council shall invite other appropriate parties as is necessary to effectuate
 53 the purposes of this article.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-236. Secretary defined.

1 "Secretary" means the Secretary of the Department of Health and Human Resources.
 2 Effective July 1, 2019, unless the context indicates otherwise, any reference in this chapter to the
 3 Secretary of the Department of Health and Human Resources refers to the Secretary of the
 4 Department of Health and Compliance. Likewise, effective July 1, 2019, any reference to the
 5 Department of Health and Human Resources refers to the Department of Health and Compliance
 6 unless the context indicates otherwise.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

PART 4. WITHHOLDING FROM INCOME OF AMOUNTS PAYABLE AS SUPPORT.

§48-14-401. Support orders to provide for withholding from income.

1 (a) Every order entered or modified under the provisions of this article that requires the
2 payment of child support or spousal support must include a provision for automatic withholding
3 from income of the obligor in order to facilitate income withholding as a means of collecting
4 support.

5 (b) Every support order heretofore or hereafter entered by a court of competent jurisdiction
6 is considered to provide for an order of income withholding, notwithstanding the fact that the
7 support order does not in fact provide for an order of withholding. Income withholding may be
8 instituted under this part for any arrearage without the necessity of additional judicial or legal
9 action.

10 (c) Every such order as described in subsection (a) of this section shall contain language
11 authorizing income withholding for both current support and for any arrearages to commence
12 without further court action as follows:

13 The order shall provide that income withholding shall begin immediately, without regard to
14 whether there is an arrearage;

15 (A) When a child for whom support is ordered is included or becomes included in a grant
16 of assistance from the ~~division of human services~~ Department of Health and Compliance or a
17 similar agency of a sister state for temporary assistance for needy families benefits, medical
18 assistance only benefits or foster care benefits and is referred to the Bureau for Child Support
19 Enforcement; or

20 (B) When the support obligee has applied for services from the Bureau for Child Support
21 Enforcement created pursuant to §48-18-101 *et seq.* of this codee, or the support enforcement
22 agency of another state or is otherwise receiving services from the Bureau for Child Support
23 Enforcement as provided for in this chapter. In any case where one of the parties demonstrates,
24 and the court finds, that there is good cause not to require immediate income withholding, or in
25 any case where there is filed with the court a written agreement between the parties which
26 provides for an alternative arrangement, such order shall not provide for income withholding to

27 begin immediately, pursuant to §48-14-403 of this code.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-101. Establishment of the Bureau for Child Support Enforcement; cooperation with the ~~division of human services~~ Department of Health and Compliance.

1 (a) Effective July 1, 1995, there is hereby established in the Department of Health and
2 ~~Human Resources~~ Compliance the Bureau for Child Support Enforcement. The bureau is under
3 the immediate supervision of the commissioner, who is responsible for the exercise of the duties
4 and powers assigned to the bureau under the provisions of this chapter. The bureau is designated
5 as the single and separate organizational unit within this state to administer the state plan for child
6 and spousal support according to 42 U.S.C. §654(3).

7 (b) The ~~division of human services~~ Department of Health and Compliance shall cooperate
8 with the Bureau for Child Support Enforcement. At a minimum, such cooperation shall require that
9 the ~~division of human services~~ Department of Health and Compliance:

10 (1) Notify the Bureau for Child Support Enforcement when the ~~division of human services~~
11 Department of Health and Compliance proposes to terminate or provide public assistance payable
12 to any obligee;

13 (2) Receive support payments made on behalf of a former or current recipient to the extent
14 permitted by Title IV-D, Part D of the Social Security Act; and

15 (3) Accept the assignment of the right, title or interest in support payments and forward a
16 copy of the assignment to the Bureau for Child Support Enforcement.

§48-18-108. Fees.

1 (a) When the Bureau for Child Support Enforcement provides child support collection
2 services either to a public assistance recipient or to a party who does not receive public
3 assistance, the Bureau for Child Support Enforcement shall, upon written notice to the obligor,
4 charge a monthly collection fee equivalent to the full monthly cost of the services, in addition to
5 the amount of child support which was ordered by the court. The fee shall be deposited in the

6 Child Support Enforcement Fund. The service fee assessed may not exceed ten percent of the
7 monthly court-ordered child support and may not be assessed against any obligor who is current
8 in payment of the monthly court-ordered child support payments: *Provided*, That this fee may not
9 be assessed when the obligor is also a recipient of public assistance.

10 (b) Except for those persons applying for services provided by the Bureau for Child
11 Support Enforcement who are applying for or receiving public assistance from the ~~Division of~~
12 ~~Human Services~~ Department of Health and Compliance or persons for whom fees are waived
13 pursuant to a legislative rule promulgated pursuant to this section, all applicants shall pay an
14 application fee of \$25.

15 (c) Fees imposed by state and federal tax agencies for collection of overdue support shall
16 be imposed on the person for whom these services are provided. Upon written notice to the
17 obligee, the Bureau for Child Support Enforcement shall assess a fee of \$25 to any person not
18 receiving public assistance for each successful federal tax interception. The fee shall be withheld
19 prior to the assistance for each successful federal tax interception. The fee shall be withheld prior
20 to the release of the funds received from each interception and deposited in the Child Support
21 Enforcement Fund established pursuant to §48-18-107 of this code.

22 (d) In any action brought by the Bureau for Child Support Enforcement, the court shall
23 order that the obligor shall pay attorney fees for the services of the attorney representing the
24 Bureau for Child Support Enforcement in an amount calculated at a rate similar to the rate paid
25 to court-appointed attorneys paid pursuant to §29-21-13A of this code and all court costs
26 associated with the action: *Provided*, That no such award shall be made when the court finds that
27 the award of attorney's fees would create a substantial financial hardship on the obligor or when
28 the obligor is a recipient of public assistance. Further, the Bureau for Child Support Enforcement
29 may not collect such fees until the obligor is current in the payment of child support. No court may
30 order the Bureau for Child Support Enforcement to pay attorney's fees to any party in any action
31 brought pursuant to this chapter.

32 (e) This section shall not apply to the extent it is inconsistent with the requirements of
33 federal law for receiving funds for the program under Title IV-A and Title IV-D of the Social Security
34 Act, United States Code, article three, Title 42, Sections 601 to 613 and United States Code, Title
35 42, Sections 651 to 662.

§48-18-126. Review and adjustment of child support orders.

1 (a) Either parent or, if there has been an assignment of support to the Department of
2 Health and ~~Human Resources~~ Compliance, the Bureau for Child Support Enforcement shall have
3 the right to request an administrative review of the child support award in the following
4 circumstances:

5 (1) Where the request for review is received thirty-six months or more after the date of the
6 entry of the order or from the completion of the previous administrative review, whichever is later,
7 the Bureau for Child Support Enforcement shall conduct a review to determine whether the
8 amount of the child support award in such order varies from the amount of child support that would
9 be awarded at the time of the review pursuant to the guidelines for child support awards contained
10 in §48-13-101 *et seq.* of this code. If the amount of the child support award under the existing
11 order differs by ten percent or more from the amount that would be awarded in accordance with
12 the child support guidelines, the Bureau for Child Support Enforcement shall file with the family
13 court a motion for modification of the child support order. If the amount of the child support award
14 under the existing order differs by less than ten percent from the amount that would be awarded
15 in accordance with the child support guidelines, the Bureau for Child Support Enforcement may,
16 if it determines that such action is in the best interest of the child or otherwise appropriate, file
17 with the family court a motion for modification of the child support order.

18 (2) Where the request for review of a child support award is received less than thirty-six
19 months after the date of the entry of the order or from the completion of the previous administrative
20 review, the Bureau for Child Support Enforcement shall undertake a review of the case only where
21 it is alleged that there has been a substantial change in circumstances. If the Bureau for Child

22 Support Enforcement determines that there has been a substantial change in circumstances and
23 if it is in the best interests of the child, the bureau shall file with the family court a motion for
24 modification of the child support order in accordance with the guidelines for child support awards
25 contained in §48-13-101, *et seq.* of this code.

26 (b) The Bureau for Child Support Enforcement shall notify both parents at least once every
27 three years of their right to request a review of a child support order. The notice may be included
28 in any order granting or modifying a child support award. The Bureau for Child Support
29 Enforcement shall give each parent at least thirty days' notice before commencing any review and
30 shall further notify each parent, upon completion of a review, of the results of the review, whether
31 of a proposal to move for modification or of a proposal that there should be no change.

32 (c) When the result of the review is a proposal to move for modification of the child support
33 order, each parent shall be given thirty days' notice of the hearing on the motion, the notice to be
34 directed to the last known address of each party by first-class mail. When the result of the review
35 is a proposal that there be no change, any parent disagreeing with that proposal may, within thirty
36 days of the notice of the results of the review, file with the court a motion for modification setting
37 forth in full the grounds therefor.

38 (d) For the purposes of this section, a "substantial change in circumstances" includes, but
39 is not limited to, a changed financial condition, a temporary or permanent change in physical
40 custody of the child which the court has not ordered, increased need of the child or other financial
41 conditions. "Changed financial conditions" means increases or decreases in the resources
42 available to either party from any source. Changed financial conditions includes, but is not limited
43 to, the application for or receipt of any form of public assistance payments, unemployment
44 compensation and workers' compensation or a fifteen percent or more variance from the amount
45 of the existing order and the amount of child support that would be awarded according to the child
46 support guidelines.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.

§48-19-103. Duties of the bureau for support enforcement attorneys.

1 Subject to the control and supervision of the commissioner:

2 ~~(a)~~ (1) The Bureau for Child Support Enforcement attorney shall supervise and direct the
3 secretarial, clerical and other employees in his or her office in the performance of their duties as
4 such performance affects the delivery of legal services. The Bureau for Child Support
5 Enforcement attorney will provide appropriate instruction and supervision to employees of his or
6 her office who are nonlawyers, concerning matters of legal ethics and matters of law, in
7 accordance with applicable state and federal statutes, rules and regulations.

8 ~~(b)~~ (2) In accordance with the requirements of rule 5.4(c) of the Rules Of Professional
9 Conduct as promulgated and adopted by the Supreme Court of Appeals, the Bureau for Child
10 Support Enforcement attorney shall not permit a nonlawyer who is employed by the Department
11 of Health and ~~Human Resources~~ Compliance in a supervisory position over the Bureau for Child
12 Support Enforcement attorney to direct or regulate the attorney's professional judgment in
13 rendering legal services to recipients of services in accordance with the provisions of this chapter;
14 nor shall any nonlawyer employee of the department attempt to direct or regulate the attorney's
15 professional judgment.

16 ~~(c)~~ (3) The Bureau for Child Support Enforcement attorney shall make available to the
17 public an informational pamphlet, designed in consultation with the commissioner. The
18 informational pamphlet shall explain the procedures of the court and the Bureau for Child Support
19 Enforcement attorney; the duties of the Bureau for Child Support Enforcement attorney; the rights
20 and responsibilities of the parties; and the availability of human services in the community. The
21 informational pamphlet shall be provided as soon as possible after the filing of a complaint or
22 other initiating pleading. Upon request, a party to a domestic relations proceeding shall receive
23 an oral explanation of the informational pamphlet from the office of the Bureau for Child Support
24 Enforcement attorney.

25 ~~(d)~~ (4) The Bureau for Child Support Enforcement shall act to establish the paternity of

26 every child born out of wedlock for whom paternity has not been established, when the child's
27 caretaker is an applicant for or recipient of temporary assistance for needy families, and when the
28 caretaker has assigned to the ~~division of human services~~ Department of Health and Compliance
29 any rights to support for the child which might be forthcoming from the putative father: *Provided,*
30 That if the Bureau for Child Support Enforcement attorney is informed by the Secretary of the
31 Department of Health and ~~Human Resources~~ Compliance or his or her authorized employee that
32 it has been determined that it is against the best interest of the child to establish paternity, the
33 Bureau for Child Support Enforcement attorney shall decline to so act. The Bureau for Child
34 Support Enforcement attorney, upon the request of the mother, alleged father or the caretaker of
35 a child born out of wedlock, regardless of whether the mother, alleged father or the caretaker is
36 an applicant or recipient of temporary assistance for needy families, shall undertake to establish
37 the paternity of such child.

38 (e) (5) The Bureau for Child Support Enforcement attorney shall undertake to secure
39 support for any individual who is receiving temporary assistance for needy families when such
40 individual has assigned to the ~~division of human services~~ Department of Health and Compliance
41 any rights to support from any other person such individual may have: *Provided,* That if the Bureau
42 for Child Support Enforcement attorney is informed by the Secretary of the Department of Health
43 and ~~Human Resources~~ Compliance or his or her authorized employee that it has been determined
44 that it is against the best interests of a child to secure support on the child's behalf, the Bureau
45 for Child Support Enforcement attorney shall decline to so act. The Bureau for Child Support
46 Enforcement attorney, upon the request of any individual, regardless of whether such individual
47 is an applicant or recipient of temporary assistance for needy families, shall undertake to secure
48 support for the individual. If circumstances require, the Bureau for Child Support Enforcement
49 attorney shall utilize the provisions of §48-16-101, *et seq.* of this code and any other reciprocal
50 arrangements which may be adopted with other states for the establishment and enforcement of
51 support obligations, and if such arrangements and other means have proven ineffective, the

52 Bureau for Child Support Enforcement attorney may utilize the federal courts to obtain and
53 enforce court orders for support.

54 (f) (6) The Bureau for Child Support Enforcement attorney shall pursue the enforcement
55 of support orders through the withholding from income of amounts payable as support:

56 (4) (A) Without the necessity of an application from the obligee in the case of a support
57 obligation owed to an obligee to whom services are already being provided under the provisions
58 of this chapter; and

59 (2) (B) On the basis of an application for services in the case of any other support
60 obligation arising from a support order entered by a court of competent jurisdiction.

61 (g) (7) The Bureau for Child Support Enforcement attorney may decline to commence an
62 action to obtain an order of support under the provisions of §48-14-101 *et seq.* of this code if an
63 action for divorce, annulment or separate maintenance is pending, or the filing of such action is
64 imminent, and such action will determine the issue of support for the child: *Provided*, That such
65 action shall be deemed to be imminent if it is proposed by the obligee to be commenced within
66 the twenty-eight days next following a decision by the Bureau for Child Support Enforcement
67 attorney that an action should properly be brought to obtain an order for support.

68 (h) (8) If the Bureau for Child Support Enforcement office, through the Bureau for Child
69 Support Enforcement attorney, shall undertake paternity determination services, child support
70 collection or support collection services upon the written request of an individual who is not an
71 applicant or recipient of assistance from the ~~division of human services~~ Department of Health and
72 Compliance, the office may impose an application fee for furnishing such services. Such
73 application fee shall be in a reasonable amount, not to exceed \$25, as determined by the
74 commissioner: *Provided*, That the commissioner may fix such amount at a higher or lower rate
75 which is uniform for this state and all other states if the secretary of the federal Department of
76 Health and Human Services determines that a uniform rate is appropriate for any fiscal year to
77 reflect increases or decreases in administrative costs. Any cost in excess of the application fee

78 so imposed may be collected from the obligor who owes the child or spousal support obligation
79 involved.

ARTICLE 22. ADOPTION.

§48-22-104. Agency defined.

1 "Agency" means a public or private entity, including the Department of ~~Health and Human~~
2 ~~Resources~~ Services, that is authorized by law to place children for adoption.

ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.

PART 3. ESTABLISHMENT AND MAINTENANCE OF VOLUNTARY ADOPTION REGISTRY.

§48-23-301. ~~Division of human services~~ Department of Human Services to establish and maintain mutual consent voluntary adoption registry; rulemaking.

1 The ~~division of human services~~ Department of Human Services, as provided for in §~~9-2-~~
2 ~~4, et seq.~~ chapter 9 of this code, shall establish and maintain the mutual consent voluntary
3 adoption registry, except that the division may contract out the function of establishing and
4 maintaining the registry to a licensed voluntary agency with expertise in providing post-legal
5 adoption services, in which case the agency shall establish and maintain the registry that would
6 otherwise be operated by the ~~division~~ Department of Human Services.

7 The secretary of the Department of ~~Health and Human Resources~~ Services shall
8 promulgate and adopt such rules as are necessary for implementing this article.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART 5. DUTIES OF THE BUREAU FOR PUBLIC HEALTH.

§48-26-501. Development of state public health plan for reducing domestic violence.

1 (a) The Bureau for Public Health of the Department of ~~Health and Human Resources~~
2 Health and Compliance, in consultation with the family protection services board, shall:

3 (1) Assess the impact of domestic violence on public health; and

4 (2) Develop a state public health plan for reducing the incidence of domestic violence in
5 this state.

6 (b) The state public health plan shall:

7 (1) Include, but not be limited to, public education, including the use of the various
8 communication media to set forth the public health perspective on domestic violence;

9 (2) Be developed in consultation with public and private agencies that provide programs
10 for victims of domestic violence, advocates for victims, organizations representing the interests of
11 shelters, and persons who have demonstrated expertise and experience in providing health care
12 to victims of domestic violence and their children; and

13 (3) Be completed on or before January 1, 2000.

14 (c) The Bureau for Public Health ~~of the Department of Health and Human Resources~~ shall:

15 (1) Transmit a copy of the state public health plan to the Governor and the Legislature;
16 and

17 (2) Review and update the state public health plan annually.

§48-26-502. Notice of victims' rights, remedies and available services; required information.

1 (a) The Bureau for Public Health ~~of the Department of Health and Human Resources~~ shall
2 make available to health care facilities and practitioners a written form notice of the rights of
3 victims and the remedies and services available to victims of domestic violence.

4 (b) A health care practitioner whose patient has injuries or conditions consistent with
5 domestic violence shall provide to the patient, and every health care facility shall make available
6 to all patients, a written form notice of the rights of victims and the remedies and services available
7 to victims of domestic violence.

§48-26-503. Standards, procedures and curricula.

1 (a) The Bureau for Public Health ~~of the Department of Health and Human Resources~~ shall
2 publish model standards, including specialized procedures and curricula, concerning domestic

3 violence for health care facilities, practitioners and personnel.

4 (b) The procedures and curricula shall be developed in consultation with public and private
5 agencies that provide programs for victims of domestic violence, advocates for victims,
6 organizations representing the interests of shelters and personnel who have demonstrated
7 expertise and experience in providing health care to victims of domestic violence and their
8 children.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited, to child advocacy, care, residential and treatment programs.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, child advocacy, care, residential and treatment
3 programs, except in those instances where a different meaning is provided or the context in which
4 the word is used clearly indicates that a different meaning is intended.

5 "Child advocacy center (CAC)" means a community-based organization that is a member
6 in good standing with the West Virginia Child Abuse Network, Inc., as set forth in §49-3-101 of
7 this code.

8 "Child care" means responsibilities assumed and services performed in relation to a child's
9 physical, emotional, psychological, social and personal needs and the consideration of the child's
10 rights and entitlements, but does not include secure detention or incarceration under the
11 jurisdiction of the Division of Juvenile Services pursuant to §49-2-901 through §49-2-913 of this
12 code. It includes the provision of child care services or residential services.

13 "Child care center" means a facility maintained by the state or any county or municipality
14 thereof, or any agency or facility maintained by an individual, firm, corporation, association or
15 organization, public or private for the care of thirteen or more children for child care services in

16 any setting, if the facility is open for more than thirty days per year per child.

17 "Child care services" means direct care and protection of children during a portion of a
18 twenty-four hour day outside of the child's own home which provides experiences to children that
19 foster their healthy development and education.

20 "Child placing agency" means a child welfare agency organized for the purpose of placing
21 children in private family homes for foster care or for adoption. The function of a child-placing
22 agency may include the investigation and certification of foster family homes and foster family
23 group homes as provided in this chapter. The function of a child placing agency may also include
24 the supervision of children who are sixteen or seventeen years old and living in unlicensed
25 residences.

26 "Child welfare agency" means any agency or facility maintained by the state or any county
27 or municipality thereof, or any agency or facility maintained by an individual, firm, corporation,
28 association or organization, public or private, to receive children for care and maintenance or for
29 placement in residential care facilities, including, without limitation, private homes or any facility
30 that provides care for unmarried mothers and their children. A child welfare agency does not
31 include juvenile detention facilities or juvenile correctional facilities operated by or under contract
32 with the Division of Juvenile Services, pursuant to §49-2-901 through §49-2-913 of this code, nor
33 any other facility operated by that division for the secure housing or holding of juveniles committed
34 to its custody.

35 "Community based" means a facility, program or service located near the child's home or
36 family and involving community participation in planning, operation and evaluation and which may
37 include, but is not limited to, medical, educational, vocational, social and psychological guidance,
38 training, special education, counseling, substance abuse and any other treatment or rehabilitation
39 services.

40 "Community-based juvenile probation sanctions" means any of a continuum of
41 nonresidential accountability measures, programs and sanctions in response to a technical

42 violation of probation, as part of a system of community-based juvenile probation sanctions and
43 incentives, that may include, but are not limited to:

44 (A) Electronic monitoring;

45 (B) Drug and alcohol screening, testing or monitoring;

46 (C) Youth reporting centers;

47 (D) Reporting and supervision requirements;

48 (E) Community service; and

49 (F) Rehabilitative interventions such as family counseling, substance abuse treatment,
50 restorative justice programs and behavioral or mental health treatment.

51 "Community services" means nonresidential prevention or intervention services or
52 programs that are intended to reduce delinquency and future court involvement.

53 "Evidence-based practices" means policies, procedures, programs and practices
54 demonstrated by research to reliably produce reductions in the likelihood of reoffending.

55 "Facility" means a place or residence, including personnel, structures, grounds and
56 equipment used for the care of a child or children on a residential or other basis for any number
57 of hours a day in any shelter or structure maintained for that purpose. Facility does not include
58 any juvenile detention facility or juvenile correctional facility operated by or under contract with
59 the Division of Juvenile Services for the secure housing or holding of juveniles committed to its
60 custody. "Family child care facility" means any facility which is used to provide nonresidential child
61 care services for compensation for seven to twelve children, including children who are living in
62 the household, who are under six years of age. No more than four of the total number of children
63 may be under twenty-four months of age. A facility may be in a provider's residence or a separate
64 building.

65 "Family child care home" means a facility which is used to provide nonresidential child
66 care services for compensation in a provider's residence. The provider may care for four to six
67 children, at one time including children who are living in the household, who are under six years

68 of age. No more than two of the total number of children may be under twenty-four months of
69 age."Family resource network" means:

70 (A) A local community organization charged with service coordination, needs and resource
71 assessment, planning, community mobilization and evaluation, and which has met the following
72 criteria:

73 (i) Agreeing to a single governing entity;

74 (ii) Agreeing to engage in activities to improve service systems for children and families
75 within the community;

76 (iii) Addressing a geographic area of a county or two or more contiguous counties;

77 (iv) Having nonproviders, which include family representatives and other members who
78 are not employees of publicly funded agencies, as the majority of the members of the governing
79 body, and having family representatives as the majority of the nonproviders;

80 (v) Having representatives of local service agencies, including, but not limited to, the public
81 health department, the behavioral health center, the local health and human resources agency
82 and the county school district, on the governing body; and

83 (vi) Accepting principles consistent with the cabinet's mission as part of its philosophy.

84 (B) A family resource network may not provide direct services, which means to provide
85 programs or services directly to children and families.

86 "Family support", for the purposes of §49-2-601 through §49-2-605 of this code, means
87 goods and services needed by families to care for their family members with developmental
88 disabilities and to enjoy a quality of life comparable to other community members.

89 "Family support program" means a coordinated system of family support services
90 administered by the Department of Health and Human Resources through contracts with
91 behavioral health agencies throughout the state.

92 "Foster family home" means a private residence which is used for the care on a residential
93 basis of no more than five children who are unrelated by blood, marriage or adoption to any adult

94 member of the household.

95 "Health care and treatment" means:

96 (A) Developmental screening;

97 (B) Mental health screening;

98 (C) Mental health treatment;

99 (D) Ordinary and necessary medical and dental examination and treatment;

100 (E) Preventive care including ordinary immunizations, tuberculin testing and well-child
101 care; and

102 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and
103 treatment does not include an abortion."Home-based family preservation services" means
104 services dispensed by the ~~Division~~ Department of Human Services or by another person,
105 association or group who has contracted with that division to dispense services when those
106 services are intended to stabilize and maintain the natural or surrogate family in order to prevent
107 the placement of children in substitute care. There are two types of home-based family
108 preservation services and they are as follows:

109 (A) Intensive, short-term intervention of four to six weeks; and

110 (B) Home-based, longer-term after care following intensive intervention.

111 "Informal family child care" means a home that is used to provide nonresidential child care
112 services for compensation for three or fewer children, including children who are living in the
113 household, who are under six years of age. Care is given in the provider's own home to at least
114 one child who is not related to the caregiver.

115 "Nonsecure facility" means any public or private residential facility not characterized by
116 construction fixtures designed to physically restrict the movements and activities of individuals
117 held in lawful custody in that facility and which provides its residents access to the surrounding
118 community with supervision.

119 "Nonviolent misdemeanor offense" means a misdemeanor offense that does not include

120 any of the following:

121 (A) An act resulting in bodily injury or death;

122 (B) The use of a weapon in the commission of the offense;

123 (C) A domestic abuse offense involving a significant or likely risk of harm to a family
124 member or household member;

125 (D) A criminal sexual conduct offense; or

126 (E) Any offense for driving under the influence of alcohol or drugs.

127 "Out-of-home placement" means a post-adjudication placement in a foster family home,
128 group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment
129 facility, staff-secure facility, hardware secure facility, detention facility or other residential
130 placement other than placement in the home of a parent, custodian or guardian.

131 "Out-of-school time" means a child care service which offers activities to children before
132 and after school, on school holidays, when school is closed due to emergencies and on school
133 calendar days set aside for teacher activities.

134 "Placement" means any temporary or permanent placement of a child who is in the
135 custody of the state in any foster home, group home or other facility or residence.

136 "Pre-adjudicatory community supervision" means supervision provided to a youth prior to
137 adjudication, a period of supervision up to one year for an alleged status or delinquency offense.

138 "Regional family support council" means the council established by the regional family
139 support agency to carry out the responsibilities specified in §49-2-601 through §49-2-605 of this
140 code.

141 "Relative family child care" means a home that provides nonresidential child care services
142 only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt,
143 uncle, great-aunt, great-uncle or adult sibling of the child or children receiving care. Care is given
144 in the provider's home.

145 "Residential services" means child care which includes the provision of nighttime shelter

146 and the personal discipline and supervision of a child by guardians, custodians or other persons
147 or entities on a continuing or temporary basis. It may include care and/or treatment for
148 transitioning adults. Residential services does not include or apply to any juvenile detention facility
149 or juvenile correctional facility operated by the Division of Juvenile Services, created pursuant to
150 this chapter, for the secure housing or holding of juveniles committed to its custody.

151 "Risk and needs assessment" means a validated, standardized actuarial tool which
152 identifies specific risk factors that increase the likelihood of reoffending and the factors that, when
153 properly addressed, can reduce the likelihood of reoffending.

154 "Secure facility" means any public or private residential facility which includes construction
155 fixtures designed to physically restrict the movements and activities of juveniles or other
156 individuals held in lawful custody in such facility.

157 "Staff-secure facility" means any public or private residential facility characterized by staff
158 restrictions of the movements and activities of individuals held in lawful custody in such facility
159 and which limits its residents' access to the surrounding community, but is not characterized by
160 construction fixtures designed to physically restrict the movements and activities of residents.

161 "Standardized screener" means a brief, validated nondiagnostic inventory or
162 questionnaire designed to identify juveniles in need of further assessment for medical, substance
163 abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

164 "State family support council" means the council established by the Department of ~~Health~~
165 ~~and Human Resources~~ Human Services pursuant to ~~part six, article two of this chapter~~ §49-2-605
166 of this code to carry out the responsibilities specified in §49-2-*et seq.* of this code.

167 "Time-limited reunification services" means individual, group and family counseling,
168 inpatient, residential or outpatient substance abuse treatment services, mental health services,
169 assistance to address domestic violence, services designed to provide temporary child care and
170 therapeutic services for families, including crisis nurseries and transportation to or from those
171 services, provided during fifteen of the most recent twenty-two months a child or juvenile has been

172 in foster care, as determined by the earlier date of the first judicial finding that the child is subjected
173 to abuse or neglect, or the date which is sixty days after the child or juvenile is removed from
174 home.

175 "Technical violation" means an act that violates the terms or conditions of probation or a
176 court order that does not constitute a new delinquent offense.

177 "Truancy diversion specialist" means a school-based probation officer or truancy social
178 worker within a school or schools who, among other responsibilities, identifies truants and the
179 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior
180 to court involvement.

§49-1-208. Definitions related, but not limited, to state and local agencies.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, state and local agencies, except in those instances
3 where a different meaning is provided or the context in which the word is used clearly indicates
4 that a different meaning is intended.

5 "Department" or "state department" means the West Virginia Department of Health and
6 Human Resources. Effective July 1, 2019, unless the context indicates otherwise, any reference
7 in this chapter to the Department of Health and Human Resources refers to the Department of
8 Human Services.

9 "Division of Juvenile Services" means the division within the West Virginia Department of
10 ~~Military Affairs and Public Safety~~ Human Services.

11 "Law-enforcement officer" means a law-enforcement officer of the State Police, a
12 municipality or county sheriff's department.

13 "Secretary" means the Secretary of the West Virginia Department of Health and Human
14 Resources. Effective July 1, 2019, unless the context indicates otherwise, any reference in this
15 chapter to the Secretary of the Department of Health and Human Resources refers to the
16 Secretary of the Department of Human Services.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

PART IX. GENERAL AUTHORITY AND DUTIES OF THE DIVISION OF JUVENILE SERVICES

§49-2-901. Policy; cooperation.

1 ~~(a)~~ It is the policy of the state to:

2 (1) Provide a coordinated continuum of care for its children who have been charged with
3 an offense which would be a crime if committed by an adult, whether they are taken into custody
4 and securely detained or released pending adjudication by the court; and

5 (2) Ensure the safe and efficient custody of a securely detained child through the entire
6 juvenile justice process, and this can best be accomplished by the state by providing for
7 cooperation and coordination between the agencies of government which are charged with
8 responsibilities for the children of the state.

9 ~~(b) When any juvenile is ordered by the court to be transferred from the custody of one of
10 these agencies into the custody of the other, the Department of Health and Human Resources
11 and the Division of Juvenile Services shall cooperate with each other to the maximum extent
12 necessary in order to ease the child's transition and to reduce unnecessary cost, duplication and
13 delay.~~

§49-2-902. Division of Juvenile Services; transfer of functions; juvenile placement.

1 ~~(a) The Division of Juvenile Services is created within the Department of Military Affairs
2 and Public Safety. Effective July 1, 2019, all powers, duties, entities operated by the Division of
3 Juvenile Services, employees and functions of the Division of Juvenile Services created pursuant
4 to the provisions of this article shall be transferred to the Department of Human Services created
5 pursuant to the provisions of chapter nine of this code. Any reference in this code to the Division
6 of Juvenile Services or the placement of the Division of Juvenile Services within the Department
7 of Military Affairs and Public Safety means the Bureau for Children and Families within the
8 Department of Human Services with the changes made to this article during the 2018 Regular~~

9 Session of the Legislature.

10 (b) The administrative head of the Division of Juvenile Services shall be the director. The
11 director shall be appointed by the ~~Governor with the advice and consent of the Senate~~ Secretary
12 of the Department of Human Services and shall be responsible for the control and supervision of
13 each of its offices. The director may appoint deputy directors and assign them duties as may be
14 necessary for the efficient management and operation of the division.

15 ~~(b)~~ (c) The Division of Juvenile Services within the Bureau for Children and Families
16 consists, at a minimum, of three subdivisions:

17 (1) The Office of Juvenile Detention, which is responsible for operating and maintaining
18 centers for the predispositional detention of juveniles, including juveniles who have been
19 transferred to adult criminal jurisdiction pursuant to §49-4-801 through §49-4-803 of this code and
20 juveniles who are awaiting transfer to a juvenile corrections facility;

21 (2) The Office of Juvenile Corrections, which is also responsible for operating and
22 maintaining juvenile corrections facilities; and

23 (3) The Office of Community-Based Services, shall provide at a minimum, masters level
24 therapy services; family, individual and group counseling; community service activities;
25 transportation; and aftercare programs.

26 ~~(e)~~ (d) Notwithstanding any provisions of this code to the contrary, whenever a juvenile is
27 ordered into the custody of the Division of Juvenile Services, the director may place the juvenile
28 while he or she is in the division's custody at whichever facility operated by the division is deemed
29 by the director to be most appropriate considering the juvenile's well-being and any
30 recommendations of the court placing the juvenile in the division's custody.

§49-2-903. Powers and duties; comprehensive strategy; cooperation.

1 (a) The Division of Juvenile Services has the following duties as to juveniles in detention
2 facilities or juvenile corrections facilities:

3 (1) Cooperating with the United States Department of Justice in operating, maintaining

4 and improving juvenile correction facilities and predispositional detention centers, complying with
5 regulations thereof, and receiving and expending federal funds for the services;

6 (2) Providing care for children needing secure detention pending disposition by a court
7 having juvenile jurisdiction or temporary care following a court action;

8 (3) Assigning the necessary personnel and providing adequate space for the support and
9 operation of any facility providing for the secure detention of children committed to the care of the
10 Division of Juvenile Services;

11 (4) Proposing rules which outline policies and procedures governing the operation of
12 correctional, detention and other facilities in its division wherein juveniles may be securely
13 housed;

14 (5) Assigning the necessary personnel and providing adequate space for the support and
15 operation of its facilities;

16 (6) Developing a comprehensive plan to maintain and improve a unified state system of
17 regional predispositional detention centers for juveniles;

18 (7) Working in cooperation with other entities within the Department of ~~Health and Human~~
19 ~~Resources~~ Human Services in establishing, maintaining, and continuously refining and
20 developing a balanced and comprehensive state program for children who have been adjudicated
21 delinquent;

22 (8) In cooperation with other entities within the Department of ~~Health and Human~~
23 ~~Resources~~ Human Services establishing programs and services within available funds, designed
24 to:

25 (A) Prevent juvenile delinquency;

26 (B) To divert juveniles from the juvenile justice system:

27 (C) To provide community-based alternatives to juvenile detention and correctional
28 facilities; and

29 (D) To encourage a diversity of alternatives within the juvenile justice system;

30 ~~(b) Working in collaboration with the Department of Health and Human Resources~~ The
31 Department of Human Services and the Division of Juvenile Services shall employ a
32 comprehensive strategy for the social and rehabilitative programming and treatment of juveniles,
33 consistent with the principles adopted by the Office of Juvenile Justice and Delinquency
34 Prevention of the Office of Justice Programs of the United States Department of Justice.

§49-2-905. Juvenile detention and corrections facility personnel.

1 (a) All persons employed at a juvenile detention or corrections facility shall be employed
2 at a salary and with benefits consistent with the approved plan of compensation of the Division of
3 Personnel, created under §29-6-5 of this code; all employees will also be covered by the policies
4 and procedures of the West Virginia Public Employees Grievance Board, created under §6C-2-1
5 *et seq.* of this code and the classified service protection policies of the Division of Personnel.

6 (b) The Division of Juvenile Services ~~of the Department of Military Affairs and Public Safety~~
7 is authorized to assign the necessary personnel and provide adequate space for the support and
8 operation of any facility operated by the Division of Juvenile Services ~~of the Department of Military~~
9 ~~Affairs and Public Safety~~ providing for the detention of children as provided in this article, subject
10 to and not inconsistent with the appropriation and availability of funds.

**§49-2-906. Medical and other treatment of juveniles in custody of the division; consent;
service providers; medical care; pregnant inmates; claims processing and
administration by the department; authorization of cooperative agreements.**

1 (a) Notwithstanding any other provision of law to the contrary, the director, or his or her
2 designee, is hereby authorized to consent to the medical or other treatment of any juvenile in the
3 legal or physical custody of the director or the division.

4 (b) In providing or arranging for the necessary medical and other care and treatment of
5 juveniles committed to the division's custody, the director shall use service providers who provide
6 the same or similar services to juveniles under existing contracts with the Department of Health
7 and Compliance and the Department of Human Resources Services. In order to obtain the most

8 advantageous reimbursement rates, to capitalize on an economy of scale and to avoid duplicative
9 systems and procedures, the department shall administer and process all claims for medical or
10 other treatment of juveniles committed to the division's custody.

11 (c) In providing or arranging for the necessary medical and other care and treatment of
12 juveniles committed to the division's custody, the director shall assure that pregnant inmates will
13 not be restrained after reaching the second trimester of pregnancy until the end of the pregnancy.
14 However, if the inmate, based upon her classification, discipline history or other factors deemed
15 relevant by the director poses a threat of escape, or to the safety of herself, the public, staff, or
16 the unborn child, the inmate may be restrained in a manner reasonably necessary. Additionally,
17 that prior to directing the application of restraints and where there is no threat to the safety of the
18 inmate, the public, staff or the fetus, the director or designee shall consult with an appropriate
19 health care professional to assure that the manner of restraint will not pose an unreasonable risk
20 of harm to the inmate or the fetus.

21 (d) For purposes of implementing the mandates of this section, the director is hereby
22 authorized and directed to enter into any necessary agreements with the Department of Health
23 ~~and Human Resources~~ and Compliance. An agreement will include, at a minimum, for the direct
24 and incidental costs associated with that care and treatment to be paid by the Division of Juvenile
25 Services.

§49-2-913. Juvenile Justice Reform Oversight Committee.

1 (a) The Juvenile Justice Reform Oversight Committee is hereby created to oversee the
2 implementation of reform measures intended to improve the state's juvenile justice system.

3 (b) The committee shall be comprised of seventeen members, including the following
4 individuals:

5 (1) The Governor, or his or her designee, who shall preside as chair of the committee;

6 (2) Two members from the House of Delegates, appointed by the Speaker of the House
7 of Delegates, who shall serve as nonvoting, ex officio members;

8 (3) Two members from the Senate, appointed by the President of the Senate, who shall
9 serve as nonvoting, ex officio members;

10 (4) The Secretary of the Department of ~~Health and Human Resources~~ Services, or his or
11 her designee;

12 (5) The Director of the Division of Juvenile Services, or his or her designee;

13 (6) The Superintendent of the State Board of Education, or his or her designee;

14 (7) The Administrative Director of the Supreme Court of Appeals, or his or her designee,
15 who shall serve as nonvoting, ex officio member;

16 (8) The Director of the Division of Probation Services, or his or her designee;

17 (9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of
18 Appeals, who shall serve as nonvoting, ex officio members;

19 (10) One community member juvenile justice stakeholder, appointed by the Governor;

20 (11) One juvenile crime victim advocate, appointed by the Governor;

21 (12) One member from the law-enforcement agency, appointed by the Governor;

22 (13) One member from a county prosecuting attorney's office, appointed by the Governor;

23 and

24 (14) The Director of the Juvenile Justice Commission.

25 (c) The committee shall perform the following duties:

26 (1) Guide and evaluate the implementation of the provisions adopted in the year 2015
27 relating to juvenile justice reform;

28 (2) Obtain and review the juvenile recidivism and program outcome data collected
29 pursuant to §49-5-106 of this code;

30 (3) Calculate any state expenditures that have been avoided by reductions in the number
31 of youth placed in out-of-home placements by the Division of Juvenile Services or the Department
32 of ~~Health and Human Resources~~ Services as reported under §49-5-106 of this code; and

33 (4) Institute a uniform process for developing and reviewing performance measurement

34 and outcome measures through data analysis. The uniform process shall include:

35 (A) The performance and outcome measures for the court, the Department of ~~Health and~~
36 Human Resources Services and the Division of Juvenile Services; and

37 (B) The deadlines and format for the submission of the performance and outcome
38 measures; and

39 (5) Ensure system accountability and monitor the fidelity of implementation efforts or
40 programs;

41 (6) Study any additional topics relating to the continued improvement of the juvenile justice
42 system; and

43 (7) Issue an annual report to the Governor, the President of the Senate, the Speaker of
44 the House of Delegates and the Chief Justice of the Supreme Court of Appeals of West Virginia
45 on or before November 30th of each year, starting in 2016, which shall include:

46 (A) An assessment of the progress made in implementation of juvenile justice reform
47 efforts;

48 (B) A summary of the committee's efforts in fulfilling its duties as set forth in this section;
49 and

50 (C) An analysis of the recidivism data obtained by the committee under this section;

51 (D) A summary of the averted costs calculated by the committee under this section and a
52 recommendation for any reinvestment of the averted costs to fund services or programs to expand
53 West Virginia's continuum of alternatives for youth who would otherwise be placed in out-of-home
54 placement;

55 (E) Recommendations for continued improvements to the juvenile justice system.

56 (d) The Division of Justice and Community Services shall provide staff support for the
57 committee. The committee may request and receive copies of all data, reports, performance
58 measures and other evaluative material regarding juvenile justice submitted from any agency,
59 branch of government or political subdivision to carry out its duties.

60 (e) The committee shall meet within ninety days after appointment and shall thereafter
61 meet at least quarterly, upon notice by the chair. Eight members shall be considered a quorum.

62 (f) After initial appointment, members appointed to the committee by the Governor, the
63 President of the Senate, the Speaker of the House of Delegates or the Chief Justice of the
64 Supreme Court of Appeals, pursuant to subsection (b) of this section, shall serve for a term of two
65 years from his or her appointment and shall be eligible for reappointment to that position. All
66 members appointed to the committee shall serve until his or her successor has been duly
67 appointed.

68 (g) The committee shall sunset on December 31, 2020, unless reauthorized by the
69 Legislature.

ARTICLE 7. INTERSTATE COOPERATION.

§49-7-204. Medical assistance for children with special needs; rule-making; penalties.

1 (a) A child with special needs resident in this state who is the subject of an adoption
2 assistance agreement with another state shall be entitled to receive a medical assistance
3 identification from this state upon the filing in the ~~Division~~ Department of Human Services of a
4 certified copy of the adoption assistance agreement obtained from the adoption assistance state.
5 In accordance with ~~regulations~~ rules of the ~~Department of Health and Human Resources~~ Bureau
6 for Medical Services the adoptive parents shall be required at least annually to show that the
7 agreement is still in force or has been renewed.

8 (b) The ~~Department of Health and Human Resources~~ Bureau for Medical Services shall
9 consider the holder of a medical assistance identification pursuant to this section as any other
10 holder of a medical assistance identification under the laws of this state and shall process and
11 make payment on claims on account of the holder in the same manner and pursuant to the same
12 conditions and procedures as for other recipients of medical assistance.

13 (c) The ~~Department of Health and Human Resources~~ Bureau for Medical Services shall
14 provide coverage and benefits for a child who is in another state and who is covered by an

15 adoption assistance agreement made by the Department of ~~Health and Human Resources~~
16 Services for the coverage or benefits, if any, not provided by the residence state. To this end, the
17 adoptive parents acting for the child may submit evidence of payment for services or benefit
18 amounts not payable in the residence state and shall be reimbursed therefor. However, there may
19 be no reimbursement for services or benefit amounts covered under any insurance or other third
20 party medical contract or arrangement held by the child or the adoptive parents.

21 (d) The Department of ~~Health and Human Resources~~ Services shall propose rules in
22 accordance with §29A-3-1 *et seq.* of this code that are necessary to effectuate the requirements
23 and purposes of this section. The additional coverages and benefit amounts provided pursuant to
24 this section shall be for services to the cost of which there is no federal contribution, or which, if
25 federally aided, are not provided by the residence state. Among other things, the regulations shall
26 include procedures to be followed in obtaining prior approvals for services in those instances
27 where required for the assistance.

28 ~~(d)~~ (e) Any person who submits a claim for payment or reimbursement for services or
29 benefits pursuant to this section or the making of any statement in connection therewith, which
30 claim or statement the maker knows or should know to be false, misleading or fraudulent is guilty
31 of a felony and, upon conviction, shall be fined not more than \$10,000, or incarcerated in a
32 correctional facility not more than two years, or both fined and incarcerated.

33 ~~(e)~~ (f) This section applies only to medical assistance for children under adoption
34 assistance agreements from states that have entered into a compact with this state under which
35 the other state provides medical assistance to children with special needs under adoption
36 assistance agreements made by this state. All other children entitled to medical assistance
37 pursuant to adoption assistance agreements entered into by this state shall be eligible to receive
38 it in accordance with the laws and procedures applicable thereto.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.**§61-12-3. Office of Chief Medical Examiner established; appointment, duties, etc., of Chief Medical Examiner; assistants and employees; promulgation of rules.**

1 (a) The Office of Chief Medical Examiner is hereby established within the ~~division of health~~
2 ~~in the Department of Health and Human Resources~~ Compliance. The office shall be directed by
3 a Chief Medical Examiner, who may employ pathologists, toxicologists, other forensic specialists,
4 laboratory technicians, and other staff members, as needed to fulfill the responsibilities set forth
5 in this article.

6 (b) All persons employed by the Chief Medical Examiner shall be responsible to him or
7 her and may be discharged for any reasonable cause. The Chief Medical Examiner shall specify
8 the qualifications required for each position in the office of Chief Medical Examiner, and each
9 position shall be subject to rules prescribed by the secretary of the Department of Health and
10 ~~Human Resources~~ Compliance.

11 (c) The Chief Medical Examiner shall be a physician licensed to practice medicine or
12 osteopathic medicine in the State of West Virginia, who is a diplomat of the American board of
13 pathology in forensic pathology, and who has experience in forensic medicine. The Chief Medical
14 Examiner shall be appointed by the ~~director of the division of health~~ Secretary of the Department
15 of Health and Compliance to serve a five-year term unless sooner removed, but only for cause,
16 by the Governor or by the ~~director~~ secretary.

17 (d) The Chief Medical Examiner shall be responsible to the ~~director of the division of health~~
18 Secretary of the Department of Health and Compliance in all matters except that the Chief Medical
19 Examiner shall operate with independent authority for the purposes of:

20 (1) The performance of death investigations conducted pursuant to §61-12-8 of this code;

21 (2) The establishment of cause and manner of death; and

22 (3) The formulation of conclusions, opinions or testimony in judicial proceedings.

23 (e) The Chief Medical Examiner, or his or her designee, shall be available at all times for

24 consultation as necessary for carrying out the functions of the office of the Chief Medical
25 Examiner.

26 (f) The Secretary of the Department of Health and ~~Human Resources~~ Compliance is
27 hereby directed to propose legislative rules in accordance with the provisions of §29A-3-1 *et seq.*
28 of this code concerning:

29 (1) The proper conduct of medical examinations into the cause of death;

30 (2) The proper methods and procedures for postmortem inquiries conducted by county
31 medical examiners and coroners;

32 (3) The examination of substances taken from human remains in order to determine the
33 cause and manner of death; and

34 (4) The training and certification of county medical examiners and coroners.

35 (g) The Chief Medical Examiner is authorized to prescribe specific forms for record books
36 and official papers which are necessary to the functions and responsibilities of the office of the
37 Chief Medical Examiner.

38 (h) The Chief Medical Examiner, or his or her designee, is authorized to order and conduct
39 an autopsy in accordance with the provisions of this article and this code. The Chief Medical
40 Examiner, or his or her designee, shall perform an autopsy upon the lawful request of any person
41 authorized by the provisions of this code to request the performance of the autopsy.

42 (i) The salary of the Chief Medical Examiner and the salaries of all assistants and
43 employees of the office of the Chief Medical Examiner shall be fixed by the Legislature from funds
44 appropriated for that purpose. The Chief Medical Examiner shall take an oath and provide a bond
45 as required by law. Within the discretion of the ~~director of the division of health~~ Secretary of the
46 Department of Health and Compliance, the Chief Medical Examiner and his or her assistants shall
47 lecture or instruct in the field of legal medicine and other related subjects to the West Virginia
48 University or Marshall University School of Medicine, the West Virginia School of Osteopathic
49 Medicine, the West Virginia State Police, other law-enforcement agencies and other interested

50 groups.

§61-12-4. Central office and laboratory.

1 The office of the Chief Medical Examiner shall establish and maintain a central office and
 2 a laboratory having adequate professional and technical personnel and medical and scientific
 3 facilities for the performance of the duties imposed by this article. In order to secure facilities
 4 sufficient to meet the duties imposed by the provisions of this code, the Chief Medical Examiner
 5 is authorized to enter into agreements, subject to the approval of the ~~director of the division of~~
 6 ~~health~~ Secretary of the Department of Health and Compliance, with other state agencies or
 7 departments, with public or private colleges or universities, schools of medicine or hospitals for
 8 the use of laboratories, personnel, equipment and other fixtures, facilities or services.

§61-12-6. Chief medical examiner may obtain additional services and facilities.

1 Subject to the approval of the director of the ~~director of the division of health~~ Secretary of
 2 the Department of Health and Compliance, the Chief Medical Examiner may, in order to provide
 3 for the investigation of the cause of death as authorized in this article, employ and pay qualified
 4 pathologists and toxicologists to make autopsies and such pathological and chemical studies and
 5 investigations as he or she considers necessary, in the several counties or regions of the state
 6 and he or she may arrange for the use of existing laboratory facilities for such purposes. Qualified
 7 pathologists shall hold board certification or board eligibility in forensic pathology or have
 8 completed an American board of pathology fellowship in forensic pathology.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 13. CORRECTIONS MANAGEMENT.

§62-13-5. Commitments; transfers.

1 (a) All adult persons sentenced by a court to serve a sentence of incarceration in a
 2 penitentiary, prison or a correctional institution under the jurisdiction of the Commissioner of
 3 Corrections shall be deemed to be sentenced to the custody of the Commissioner of the Division

4 of Corrections. The commissioner, or his or her designee, has the authority to and may order the
5 transfer of any such adult to any appropriate institution within the Division of Corrections or within
6 the Department of Military Affairs and Public Safety. The commissioner has full discretionary
7 authority to contract with any ~~county jail~~ regional jail or other appropriate facility or institution for
8 the incarceration and care of adult inmates.

9 The commissioner, or his or her designee, may transfer any adult prisoner or inmate who
10 is mentally disturbed and who would more appropriately be treated in an institution under the
11 jurisdiction of the ~~division of health~~ Department of Health and Compliance, to the ~~division~~
12 department, subject to the approval of the ~~director of health~~ Secretary of the Department of Health
13 and Compliance; and may transfer any adult prisoner or inmate to an appropriate mental facility
14 for specialized medical treatment.

NOTE: The purpose of this bill is to reorganize of the West Virginia Department of Health and Human Resources by creating the Departments of Health and Compliance, Human Services and Healthcare Facilities and the Office of Inspector General. The bill also transfers the Division of Juvenile Services from the Department of Military Affairs and Public Safety to the newly created Department of Human Services. It also places autonomous healthcare licensing boards within the newly created Department of Health and Compliance for administrative purposes.

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