

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 698

By Senator Takubo

[Introduced February 20, 2023; referred
to the Committee Health and Human Resources]

1 A BILL to amend and reenact §5B-1-10 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §5B-2E-7b of said code; to amend and reenact §9-4B-1 and §9-4B-2 of said
3 code; to amend and reenact §16-3C-2 of said code; to amend and reenact §16-4F-1 of
4 said code; to amend and reenact §16-5-19 of said code; to amend and reenact §16-5H-2
5 and §16-5H-4 of said code; to amend and reenact §16-5Y-5 of said code; to amend and
6 reenact §16-5BB-1 of said code; to amend and reenact §16-5DD-1 of said code; to amend
7 and reenact §16-15-19 of said code; to amend and reenact §16-19-3 and §16-19-14 of
8 said code; to amend and reenact §16-30-3 and §16-30-25 of said code; to amend and
9 reenact §16-39-3 of said code; to amend and reenact §16-46-2 of said code; to amend and
10 reenact §16-54-1 of said code; to amend and reenact §16-57-3 of said code; to amend and
11 reenact §18-5-22b of said code; to amend and reenact §18B-16-3 of said code; to amend
12 and reenact §18C-3-3 of said code; to amend and reenact §20-2-46e of said code; to
13 amend and reenact §27-5-2, §27-5-3, and §27-5-4 of said code; to amend and reenact
14 §29-5A-1 of said code; to amend and reenact §29-29-3 of said code; to amend and reenact
15 §29-30-2 of said code; to amend and reenact §30-1-7a of said code; to amend and reenact
16 §30-3-2, §30-3-5, §30-3-7, §30-3-9, §30-3-11c, and §30-3-15 of said code; to amend and
17 reenact §30-3D-1, §30-3D-2, and §30-3D-3 of said code; to amend and reenact §30-3E-1,
18 §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-7, §30-3E-9, §30-3E-10a, §30-3E-11, §30-3E-12,
19 §30-3E-12a, §30-3E-13, §30-3E-14, §30-3E-15, §30-3E-16, §30-3E-17, §30-3E-18, and
20 §30-3E-19 of said code; to amend and reenact §30-14-3, §30-14-9a, §30-14-11a, and §30-
21 14-14 of said code; to amend and reenact §30-36-10 of said code; to amend and reenact
22 §33-15-14 of said code; to amend and reenact §33-42-3 of said code; to amend and
23 reenact §55-7B-2 of said code; to amend and reenact §60A-9-5 of said code; to amend
24 and reenact §60B-1-1 of said code; to amend and reenact §61-2-10b of said code; to
25 amend and reenact §61-12-7 of said code; to amend and reenact §64-9-11, §64-9-13, and
26 §64-9-14 of said code; all relating to changing the title "physician assistant" to "physician

27 associate"; changing all physician assistant references to physician associate; correcting
 28 physician relationship from supervisory to collaborative to conform with code; and defining
 29 physician associate to be synonymous with physician assistant or any other proper title
 30 designated by the American Academy of Physician Associates.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-10. West Virginia Health Care Workforce Sustainability Study.

1 (a) As used in this section, the following words and terms have the following meanings:

2 (1) "Continuum of Care" means the following health care providers or facilities, singularly
 3 or consecutively, that provide care for an individual:

4 (A) Assisted Living residence, as regulated and defined by §16-5D-1 *et seq.* of this code;

5 (B) Behavioral Health service, as defined by §16-2D-2(7) of this code;

6 (C) Hospice, as regulated and defined by §16-5I-1 *et seq.* of this code;

7 (D) Hospitals, as regulated and defined by §16-5B-1 *et seq.* of this code;

8 (E) Home Health agency, as regulated and defined by §16-2C-1 *et seq.* of this code;

9 (F) Skilled Nursing Facility/Nursing Home, as regulated and defined by §16-5C-1 *et seq.* of
 10 this code; and

11 (G) Emergency Medical Service Agency, as defined by §16-4C-1 *et seq.* of this code.

12 (2) "Department" means the Department of Commerce, including any and all agencies 11
 13 within the Department of Commerce.

14 (3) "Direct-care status" means health care providers that for the majority of time deliver
 15 care or services to individuals in such a manner that the provider could be personally identifiable
 16 by the recipient of services.

17 (4) "Entity" means an individual, partnership, corporation, or other legal entity that employs

18 or plans to employ skilled workers.

19 (5) "Government agency" means any state, county, municipal, or local public agency,
20 board, committee, or division, including educational, vocational, and technical schools.

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

24 (7) "Health care provider" means a person authorized by law to provide professional health
25 services in this state to an individual.

26 (8) "Health services" means clinically related preventive, diagnostic, treatment, or
27 rehabilitative services.

28 (9) "Indirect-care status" means health care providers that for the majority of time perform
29 managerial or administrative functions and are not in direct contact with consumers of care.

30 (10) "New graduate employee" means a health care provider within 18 months of
31 graduation from a program qualifying the individual as a health care provider.

32 (11) "Private third-party" means an individual, partnership, corporation, or other legal entity
33 that employs or plans to employ skilled workers in the workforce or that teaches, trains, certifies, or
34 provides licensure for individuals in the workforce.

35 (12) "Report" means the report required to be completed and issued by the Secretary
36 pursuant to this article.

37 (13) "Secretary" means the Secretary of the Department of Commerce.

38 (14) "Separations" means the number of full-time or part-time employees leaving an entity
39 voluntarily or involuntarily excluding per diem, contract, agency, or traveling health care
40 professionals.

41 (15) "Workforce" means an individual employed by an entity within the continuum of care.

42 (b) On or before February 1, 2021, the Secretary shall research, survey, study, and issue a
43 public report on the existing workforce in the continuum of care, as well as the anticipated future

44 workforce needs over the next 15 years.

45 (c) In addition to being made publicly available, the completed report shall be provided to
46 the Legislative Oversight Commission on Health and Human Resources Accountability
47 (LOCHHRA), created pursuant to §16-29E-1 *et seq.* of this code.

48 (d) In order to create the report required in this section in the most cost-effective and
49 efficient manner, the Secretary may seek or obtain grants to facilitate the research, survey, and
50 study; may enter into agreements with other governmental agencies, committees, research
51 divisions, including educational institutions, for the collection and analysis of information; and may
52 contract with private persons or companies: *Provided*, That any and all agreements, grants, or
53 contracts for the assistance or sharing of information shall include confidentiality provisions
54 consistent with the provisions of this section.

55 (e) The findings in the report shall summarize the data collected utilizing the categories
56 and professions contained in this section. In presenting the findings, the report shall also break
57 down its summaries on a statewide, regional, and county basis.

58 (f) The report, or any other disclosure of collected data, shall not identify specific entities,
59 providers, or facilities, nor make specific correlation between an entity, provider, or facility and the
60 workforce numbers at that entity, provider, or facility.

61 (g) To facilitate the timely collection and accuracy of data, the department is expressly
62 authorized to seek, and specifically request, information from any entity, government agency,
63 health care provider, health care facility, or private third-party: *Provided*, That the department shall
64 only request information reasonably designed to elicit the information that is sought by this section,
65 and in a manner intended to minimize obstruction to the requested entities providing necessary
66 health services. Any entity, government agency, health care provider, health care facility, or private
67 third-party in receipt of a survey or request for information from the department shall comply with
68 the request and provide any and all requested information pertinent to the research, survey, and
69 study.

70 (h) The department shall research, survey, and study the following aspects of the
71 continuum of care workforce:

72 (1) The number of individuals employed;

73 (2) The number of full-time and part-time individuals so employed;

74 (3) The number of contract, agency, or traveling nurse or specialists utilized;

75 (4) The number of vacancies;

76 (5) The number of employee separations;

77 (6) The number of new graduate employee separations;

78 (7) The average number of patients/residents treated at each entity;

79 (8) The overall number of individuals licensed, certified, or registered by the state to work in
80 the health care continuum;

81 (9) The current rate of licensure, certification, or registration by the state to work in the
82 health care continuum;

83 (10) The anticipated growth in the number of individuals that will be licensed, certified, or
84 registered in the state to work in the continuum of care over the next 15 years;

85 (11) The availability of classes or courses offered by secondary, vocational, technical,
86 community, and higher education schools or institutions to train those necessitating licensure,
87 certification, or registration to work in the health care continuum; and

88 (12) The average number of graduates per year in those classes or courses offered to train
89 those necessitating licensure, certification, or registration to work in the health care continuum.

90 (i) In collecting and reporting the data, the department shall utilize, at a minimum, the
91 following categories and professions within the continuum of care:

92 (1) Categories of entities:

93 (i) Assisted Living;

94 (ii) Behavioral Health;

95 (iii) Hospice;

- 96 (iv) Hospital;
- 97 (v) Home Health;
- 98 (vi) Skilled Nursing Facility/Nursing Home; and
- 99 (vii) Emergency Medical Service Agency.
- 100 (2) Job Professions delineated by direct-care or indirect-care status:
- 101 (i) Physician (M.D./D.O.) by specialty;
- 102 (ii) Physician Assistant Associate;
- 103 (iii) Advanced Practice Registered Nurse by role and certification;
- 104 (iv) Registered Nurse;
- 105 (v) Licensed Professional Nurse;
- 106 (vi) Nurse Aide;
- 107 (vii) Medical Assistant;
- 108 (viii) Dietician;
- 109 (ix) Social Worker;
- 110 (x) Physical Therapist;
- 111 (xi) Physical Therapy Assistant;
- 112 (xii) Occupational Therapist;
- 113 (xiii) Occupational Therapy Assistant;
- 114 (xiv) Speech Therapist;
- 115 (xv) Respiratory Therapist;
- 116 (xvi) Psychologist;
- 117 (xvii) MDS/coding specialist;
- 118 (xviii) Pharmacist;
- 119 (xix) Pharmacy Technician;
- 120 (xx) Radiologic Technologist; and
- 121 (xxi) Emergency Medical Service Personnel.

122 (j) Any material, data, or other writing made or received by the department for the purpose
123 of conducting the research, survey, study, or report, is deemed to be confidential trade secrets
124 which are exempt from disclosure under the provisions of §29B-1-4 of this code.

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-7b. Credit against taxes.

1 (a) *General.* – When a qualified professional services destination facility is located at or
2 adjacent to an existing historic resort hotel with at least five hundred rooms and the qualified
3 professional services destination facility eligible for credit under this section is primarily engaged in
4 furnishing services that are not subject to the tax imposed by article fifteen, chapter eleven of this
5 code, then in lieu of the credits that otherwise would be allowable under section seven or seven-a
6 of this article, the eligible company that complies with the requirements of this section may claim
7 the credit provided in this section: *Provided*, That the maximum amount of credit allowable under
8 this section is equal to twenty-five percent of the eligible company's qualified investment, as
9 defined in this section.

10 (b) *Definitions.* – The following words and phrases when used in this section have the
11 meanings given to them in this subsection unless the context in which used clearly indicates that a
12 different meaning was intended by the Legislature.

13 (1) "Agreement" means an agreement entered into under subsection (g) of this section.

14 (2) "Compensation" means wages, salaries, commissions and any other form of
15 remuneration paid to employees for personal services.

16 (3) "Cost-of-living adjustment" for any calendar year is the percentage, if any, by which the
17 consumer price index for the preceding calendar year exceeds the consumer price index for the
18 calendar year 2015.

19 (4) "Consumer price index" for any calendar year means the average of the federal
20 consumer price index as of the close of the twelve-month period ending on August 31 of that
21 calendar year.

22 (5) "Eligible company" for purposes of this section means any corporation, limited liability
23 company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture
24 or any other entity operating a qualified professional services destination facility, whether owned or
25 leased, within the state that: (A) creates at least one hundred twenty-five new jobs in this state
26 within 36 months after the date the qualified investment is placed into service or use, and
27 maintains those jobs for the entire ten year life of the tax credit specified in this section, (B) makes
28 available to its full-time employees health insurance coverage and pays at least fifty percent of the
29 premium for the health insurance, (C) generates, within 36 months after the date the qualified
30 investment is placed into service or use, not less than \$10 million of gross receipts upon which the
31 taxes imposed under article twenty-seven, chapter eleven of this code are paid, and (D) meets the
32 standards, limitations and requirements of this section and of the development office. An eligible
33 company may operate or intend to operate directly or indirectly through a lessee or a contract
34 operator.

35 (6) "Federal consumer price index" means the most recent consumer price index as of
36 August 31 each year for all urban consumers published by the United States Department of Labor.

37 (7) "Health insurance benefits" means employer-provided coverage for medical expenses
38 of the employee or the employee and his or her family under a group accident or health plan, or
39 employer contributions to an Archer medical savings account, as defined in Section 220 of the
40 Internal Revenue Code of 1986, as amended, or to a health savings account, as defined in Section
41 223 of the Internal Revenue Code, of the employee when the employer's contribution to any such
42 account is not less than fifty percent of the maximum amount permitted for the year as employer-
43 provided coverage under Section 220 or 223 of the Internal Revenue Code, whichever section is
44 applicable.

45 (8) "Historic resort hotel" means a resort hotel registered with the United States
46 Department of the Interior on the effective date of this amendment as a national historic landmark
47 in its National Registry of Historic Places having not fewer than five hundred guest rooms.

48 (9) "New employee" means a person residing and domiciled in this state hired by the
49 taxpayer to fill a position or a job in this state which previously did not exist in the taxpayer's
50 business enterprise in this state prior to the date the application was filed under subsection (c) of
51 this section. In no event may the number of new employees exceed the total net increase in the
52 employer's employment in this state: *Provided*, That the Tax Commissioner may require that the
53 net increase in the taxpayer's employment in this state be determined and certified for the
54 taxpayer's controlled group as defined in article twenty-four of this chapter. In addition, a person is
55 a "new employee" only if the person's duties are on a regular, full-time and permanent basis:

56 (A) "Full-time employment" means employment for at least eighty hours per month at a
57 wage not less than the amount specified in subdivision (1), subsection (d) of this section; and

58 (B) "Permanent employment" does not include employment that is temporary or seasonal
59 and therefore the wages, salaries and other compensation paid to the temporary or seasonal
60 employees will not be considered for purposes of this section even if the compensation paid to the
61 temporary or seasonal employee equals or exceeds the amount specified in paragraph (A) of this
62 subdivision.

63 (10) "New job" means a job which did not exist in the business of the taxpayer in this state
64 prior to filing the application for benefits under this section, and which is filled by a new employee.

65 (11) "Professional services" means only those services provided directly by: a physician
66 licensed to practice in this State, a surgeon licensed to practice in this State, a dentist licensed to
67 practice in this State, a podiatrist licensed to practice in this State, an osteopathic physician
68 licensed to practice in this State, a psychologist licensed to practice in this State, an optometrist
69 licensed to practice in this State, a registered nurse licensed to practice in this State, a physician
70 ~~assistant~~ associate licensed to practice in this State, a licensed practical nurse licensed to practice
71 in this State, a dental hygienist licensed to practice in this State, a social worker licensed to
72 practice in this State, or any other health care professional licensed to practice in this State;

73 (12) "Qualified investment" means one-hundred percent of the cost of property purchased

74 or leased for the construction and equipping of a qualified professional services destination facility
75 which is placed in service or use in this State by an eligible company.

76 (A) The cost of property purchased for a qualified professional services destination facility
77 is determined under the following rules:

78 (i) Cost does not include the value of property given in trade or exchange for the property
79 purchased for business expansion.

80 (ii) If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen,
81 then the cost of replacement property does not include any insurance proceeds received in
82 compensation for the loss.

83 (iii) The cost of real property acquired by written lease for a primary term of ten years or
84 longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed
85 ten years.

86 (iv) The cost of tangible personal property acquired by written lease for a primary term of
87 not less than four years.

88 (v) In the case of self-constructed property, the cost thereof is the amount properly charged
89 to the capital account for depreciation in accordance with federal income tax law.

90 (vi) The cost of property used by the taxpayer out-of-state and then brought into this State,
91 is determined based on the remaining useful life of the property at the time it is placed in service or
92 use in this State, and the cost is the original cost of the property to the taxpayer less straight line
93 depreciation allowable for the tax years or portions thereof the taxpayer used the property outside
94 this State. In the case of leased tangible personal property, cost is based on the period remaining
95 in the primary term of the lease after the property is brought into this State for use in a new or
96 expanded business facility of the taxpayer, and is the rent reserved for the remaining period of the
97 primary term of the lease, not to exceed ten years, or the remaining useful life of the property,
98 determined as aforesaid, whichever is less.

99 (c) *Credit against taxes.* – The credit allowed by this section shall be equal to twenty-five

100 percent of the eligible company's qualified investment in the qualified professional services
101 destination facility and shall be taken and applied as provided in this subsection (c).
102 Notwithstanding any other provision of this article to the contrary, no taxpayer or group of
103 taxpayers may gain entitlement to more than \$37.5 million total aggregate tax credit under this
104 section and no taxpayer, or group of taxpayers, in the aggregate may apply more than \$2.5 million
105 of annual credit in any tax year under this section, either in the form of a refund or directly against a
106 tax liability or in any combination thereof. This limitation applies to initial tax credit attributable to
107 qualified investment in a qualified professional services destination facility, and to qualified
108 investment in a follow-up project expansion, so that credit attributable additively and in the
109 aggregate to both may not be applied to exceed \$2.5 million annual credit in any tax year.

110 (1) *Application of credit.* – The amount of credit allowable under this subsection shall be
111 taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year,
112 beginning with the taxable year in which the eligible company places the qualified professional
113 services destination facility, or part thereof, in service or use in this state, unless the eligible
114 company elected to delay the beginning of the ten-year period until the next succeeding taxable
115 year. This election shall be made in the annual income tax return filed under chapter eleven of this
116 code for the taxable year in which the qualified professional services destination facility is first
117 placed into service or use by the taxpayer. Once made, the election may not be revoked. The
118 annual credit allowance is taken in the manner prescribed in subdivision (3) of this subsection (c):
119 *Provided*, That if any credit remains after the initial ten year credit application period, the amount of
120 remaining credit is carried forward to each ensuing tax year until used or until the expiration of the
121 fifth taxable year subsequent to the end of the initial ten year credit application period. If any
122 unused credit remains after expiration of the fifth taxable year subsequent to the end of the initial
123 ten year credit application period, the amount thereof is forfeited. No carryback to a prior taxable
124 year is allowed for the amount of any unused portion of any annual credit allowance.

125 (2) *Placed in service or use.* – For purposes of the credit allowed by this subsection (c),

126 qualified investment or qualified investment property is considered placed in service or use in the
127 earlier of the following taxable years:

128 (A) The taxable year in which, under the eligible company's depreciation practice, the
129 period for depreciation with respect to the property begins; or

130 (B) The taxable year in which the property is placed in a condition or state of readiness and
131 availability for a specifically assigned function.

132 (3) *Application of annual credit allowance.*

133 (A) *In general.*- The aggregate annual credit allowance for the current taxable year is an
134 amount equal to the one-tenth part allowed under subdivision (1) of this subsection for qualified
135 investment placed into service or use.

136 (B) *Application of current year annual credit allowance.* – The amount determined under
137 this subsection (c) is allowed as a credit against one hundred percent of the eligible company's
138 state tax liabilities applied as provided in paragraphs (C) and (D) of this subdivision (3), and in that
139 order:

140 (C) *Corporation net income taxes.* - The amount of allowable tax credit for the year
141 determined under paragraph (A) of this subdivision (3) shall first be applied to reduce the taxes
142 imposed by article twenty-four, chapter eleven of this code, for the taxable year determined before
143 application of allowable credits against tax.

144 (D) *Personal income taxes.* –

145 (i) If the eligible company is an electing small business corporation, as defined in section
146 1361 of the United States Internal Revenue Code of 1986, as amended, a partnership, a limited
147 liability company that is treated as a partnership for federal income tax purposes or a sole
148 proprietorship, then any unused credit after application of paragraph (C) of this subdivision (3) is
149 allowed as a credit against the taxes imposed by article twenty-one, chapter eleven of this code on
150 the members, owners, partners or interest holders in the eligible company.

151 (ii) Electing small business corporations, limited liability companies, partnerships and other

152 unincorporated organizations shall allocate the credit allowed by this article among their members
153 in the same manner as profits and losses are allocated for the taxable year.

154 (E) No credit is allowed under this subdivision (3) against any employer withholding taxes
155 imposed by article twenty-one, chapter eleven of this code.

156 (F) The tax credits allowed under articles thirteen-j, thirteen-q, thirteen-s, thirteen-r,
157 thirteen-w, and thirteen-aa of this code may not be applied to offset any tax against which the tax
158 credit allowed under this article is allowed or authorized. No person, entity, company, or eligible
159 company authorized or entitled to any tax credit allowed under this section or any member of the
160 unitary group or any member of the controlled group of which the taxpayer is a member, may gain
161 entitlement to any other economic development tax credit or economic development tax incentive
162 which relates to the investment or activity upon which the credit authorized under this section is
163 based.

164 (G) (i) In order to effectuate the purposes of this subdivision (3), the Tax Commissioner
165 may propose for promulgation rules, including emergency rules, in accordance with article three,
166 chapter twenty-nine-a of this code.

167 (ii) The Tax Commissioner may apply any amount of the tax credit otherwise available to a
168 Taxpayer under this article, to pay any delinquent West Virginia state tax liability of the taxpayer,
169 and interest and penalties as applicable.

170 (iii) Any amount of the tax credit otherwise available to a taxpayer under this article may be
171 applied by the applicable administering agency to pay any outstanding obligation to a Workers'
172 Compensation Fund, as defined in article two-c of chapter twenty-three of this code, or any
173 outstanding obligation under the West Virginia Unemployment Compensation Act.

174 (iv) Any amount of the tax credit otherwise available to a taxpayer under this article, may be
175 applied by the applicable administering agency to pay any delinquent or unpaid assessment, fee,
176 fine, civil penalty or monetary imposition imposed by the West Virginia Division of Environmental
177 Protection or the United States Environmental Protection Agency, or any agency charged with

178 enforcing federal, state or local environmental or hazardous waste regulations.

179 (H) *Unused credit, refundable credit.* – If any annual credit remains after application of
180 preceding paragraphs of this subdivision (3), the amount thereof shall be refunded annually to the
181 eligible company, and distributed in accordance with the credit distribution specified in this
182 subdivision (3): *Provided*, That the amount thereof may not exceed the limitation on annual tax
183 credit or the limitation on total aggregate tax credit specified in this section.

184 (I) *Forfeiture of credit.* - If any credit remains after expiration of the fifth taxable year
185 subsequent to the end of the initial ten year credit application period, such credit is forfeited, and
186 may not be used to offset any West Virginia tax liability.

187 (d) *Compensation of employees filling new jobs.*

188 (1) The new jobs and new employee criteria which count toward qualification of a taxpayer
189 as an eligible company for purposes of the tax credit allowed by this section shall be subject to the
190 following limitations and requirements. A job counts toward qualification of a taxpayer as an
191 eligible company if the job is a new job, as defined in this section, held by a new employee, as
192 defined in this section, and the new job:

193 (A) Pays a median wage of at least \$37,000 annually. Beginning January 1, 2015, and on
194 January 1 of each year thereafter, the Tax Commissioner shall prescribe an amount that shall
195 apply in lieu of the \$37,000 amount for new jobs filled during that calendar year. This amount is
196 prescribed by increasing the \$37,000 figure by the cost-of-living adjustment for that calendar year.
197 If any increase under this subdivision is not a multiple of \$50, the increase shall be rounded to the
198 next lowest multiple of \$50;

199 (B) Provides health insurance. The employer may, in addition, offer benefits including child
200 care, retirement and other benefits; and

201 (C) Is a full-time, permanent position, as those terms are defined in this section.

202 (D) Jobs that pay less than the statewide average nonfarm payroll wage, as determined
203 annually by the West Virginia Bureau of Employment Programs, or that pay that salary, but do not

204 also provide health benefits in addition to the salary, do not count toward qualification of a taxpayer
205 as an eligible company under this section. Jobs that are less than full-time, permanent positions do
206 not count toward qualification of a taxpayer as an eligible company under this section.

207 (E) The employer having obtained qualification as an eligible company under this section
208 for the year in which the new job is filled is not required to raise wages of the employees currently
209 employed in the new jobs upon which the initial qualification as an eligible company under this
210 section was based by reason of the cost-of-living adjustment for new jobs filled in subsequent
211 years provided the employer continues to provide healthcare.

212 (e) *Application and review.*

213 (1) *Application.* - An eligible company that meets the requirements of this section may
214 apply to the Development Office for entitlement to the tax credit authorized under this section. The
215 application shall be on a form prescribed by the Development Office and shall include all of the
216 following:

217 (A) The name and address of the applicant;

218 (B) Documentation that the applicant is a eligible company;

219 (C) Documentation that the applicant meets the requirements of this section;

220 (D) Documentation that the applicant does not owe any delinquent taxes or any other
221 amounts to the federal government, this state or any political subdivision of this state;

222 (E) An affidavit that the applicant has not filed for or publicly announced its intention to file
223 for bankruptcy protection and that the company will not seek bankruptcy protection within the next
224 six calendar months following the date of the application;

225 (F) A waiver of confidentiality under section five-d, article ten, chapter eleven of this code
226 for information provided in the application; and

227 (G) Any other information required by the Development Office.

228 (f) *Credit allowable.*

229 (1) *Certified multiple year projects.*

230 (A) In general. - A multiple year qualified professional services destination facility project
231 certified by the West Virginia Development Office is eligible for the credit allowable by this article. A
232 project eligible for certification under this section is one where the qualified investment under this
233 article creates at least the required minimum number of new jobs but the qualified investment is
234 placed in service or use over a period of up to three successive tax years: *Provided*, That the
235 qualified investment is made pursuant to a written business facility development plan of the
236 taxpayer providing for an integrated project for investment at one or more new or expanded
237 business facilities, a copy of which must be attached to the taxpayer's application for project
238 certification and approved by the West Virginia Development Office, and the qualified investment
239 placed in service or use during the first tax year would not have been made without the expectation
240 of making the qualified investment placed in service or use during the next two succeeding tax
241 years.

242 (B) Application for certification. - The application for certification of a project under this
243 section shall be filed with and approved by the West Virginia Development Office prior to any credit
244 being claimed or allowed for the project's qualified investment and new jobs created as a direct
245 result of the qualified investment. This application shall be approved in writing and contain the
246 information as the West Virginia Development Office may require to determine whether the project
247 should be certified as eligible for credit under this article.

248 (C) Review. - Within 30 days of receipt of a complete application, the Development Office,
249 in conjunction with the Tax Division of the Department of Revenue, shall review the application and
250 determine if the applicant is an eligible company and that the requirements of this section have
251 been met. Applications not approved within the 30 days specified in this subdivision are hereby
252 deemed denied.

253 (D) Approval. - The Development Office may approve or deny the application. Upon
254 approval of an application, the Development Office shall notify the applicant in writing and enter
255 into an agreement with the eligible company for benefits under this section.

256 (2) Certified follow-up project expansions.

257 (A) An eligible company that intends to undertake a follow-up project expansion, may apply
258 to the West Virginia Development Office for certification of a single, one-time, follow-up project
259 expansion, and entitlement to an additional tax credit under this section in an amount which is the
260 lesser of twenty-five percent of qualified investment in the follow-up project expansion or \$12.5
261 million. No taxpayer, or group of taxpayers, in the aggregate may apply more than \$2.5 million of
262 annual credit in any tax year under this section, either in the form of a refund or directly against a
263 tax liability or in any combination thereof. This limitation applies to initial tax credit attributable to
264 qualified investment in a qualified professional services destination facility, and to qualified
265 investment in a follow-up project expansion, so that credit attributable additively and in the
266 aggregate to both may not be applied to exceed \$2.5 million annual credit in any tax year.

267 (B) The requirements, limitations and qualifications applicable to qualified professional
268 services destination facility projects under this section apply to follow-up project expansions,
269 except for those requirements, limitations and qualifications expressly specified in this subdivision
270 (2).

271 (C) Requirements for certification of a follow-up project expansion are as follows:

272 (i) The eligible company, pursuant to certification and authorization for entitlement to tax
273 credit under subsection (1) of this section (f), has placed qualified investment of not less than \$80
274 million into service in a qualified professional services destination facility within an initial period of
275 not more than three tax years;

276 (ii) The eligible company intends to place additional qualified investment in service or use
277 in the previously certified qualified professional services destination facility project, or an
278 expansion or extension thereof. In no case shall a follow-up project expansion be certified if the
279 follow-up project expansion property is not contiguous to, or within not more than one mile of, the
280 initial qualified professional services destination facility;

281 (iii) The eligible company proposes to place the qualified investment in the follow-up

282 project expansion in service or use in the fourth tax year subsequent to the tax year in which
283 qualified investment was first placed into service or use in the initial qualified professional services
284 destination facility project, or under a multiple year project certification, in the fourth, fifth and sixth
285 tax year subsequent to the tax year in which qualified investment was first placed into service or
286 use in the initial qualified professional services destination facility project;

287 (iv) The follow-up project expansion must create and maintain at least twenty-five net new
288 jobs held by new employees, in addition to the new jobs created by the initial qualified professional
289 services destination facility project. The loss of any West Virginia job at the eligible company will
290 be subtracted from the count of new jobs attributable to the follow-up project expansion;

291 (v) The West Virginia Development Office shall not issue more than one certification for
292 any follow-up project expansion; and

293 (vi) The West Virginia Development Office shall not issue certification of a follow-up project
294 expansion unless the applicant provides convincing evidence to show that the follow-up project
295 expansion will result in jobs creation specified in this subdivision, that such jobs will remain and be
296 maintained in West Virginia for at least ten years subsequent to the placement of qualified
297 investment into service or use in the follow-up project expansion, that the follow-up project
298 expansion will not operate to the detriment of other West Virginia businesses or to the detriment of
299 the economy, public welfare or moral character of West Virginia or its people.

300 (g) *Agreement.*

301 (1) The agreement between the eligible company and the Development Office shall be
302 entered into before any benefits may be provided under this section.

303 (2) The agreement shall do all of the following:

304 (A) Specify the terms and conditions the eligible company must comply with in order to
305 receive benefits under this section, other than those terms, limitations and conditions specified
306 and mandated by statute or regulation; and

307 (B) Require the Development Office to certify all of the following to the Tax Division of the

308 Department of Revenue each taxable year an agreement under this section is in effect:

309 (i) That the eligible company is eligible to receive benefits under this section;

310 (ii) The number of new jobs created by the company during each taxable year;

311 (iii) The amount of gross wages, as determined for purposes of Form W2, as filed with the
312 Internal Revenue Service, being paid to each individual employed in a new job;

313 (iv) The amount of an eligible company's qualified investment;

314 (v) The maximum amount of credit allowable to the eligible company under this section;

315 and

316 (vi) Any other information deemed necessary by the Development Office.

317 (h) Filing and contents.

318 (1) Filing. – On or before the due date of the income tax return for each tax year in which
319 the agreement is in effect, an eligible company shall file with the Tax Division of the Department of
320 Revenue a form prescribed by the Tax Commissioner.

321 (2) Contents. - The form specified under subdivision (1) of this subsection (h) shall request
322 the following information:

323 (A) The name and Employer Identification Number of the eligible company;

324 (B) The effective date of the agreement;

325 (C) The reporting period end date;

326 (D) Information relating to each individual employed in a new job as required by the Tax
327 Commissioner;

328 (E) Aggregate gross receipts for the tax period and gross receipts on which tax has been
329 paid under article twenty-seven, chapter eleven of this code for the tax period; and

330 (F) Any other information required by the Tax Commissioner.

331 (3) *Taking of credit.* - The taxpayer, participant or participants claiming the credit for
332 qualified investments in a certified project shall annually file with their income tax returns filed
333 under chapter eleven of this code:

334 (A) Certification that the taxpayer's or participant's qualified investment property continues
 335 to be used in the project and if disposed of during the tax year, was not disposed of prior to
 336 expiration of its useful life;

337 (B) Certification that the new jobs created by the project's qualified investment continue to
 338 exist and are filled by persons who are residents of this State; and

339 (C) Any other information the Tax Commissioner requires to determine continuing eligibility
 340 to claim the annual credit allowance for the project's qualified investment.

341 (4) Confidentiality.- The contents of the completed form shall be subject to the
 342 confidentiality rules set forth in section five-d, article ten, chapter eleven of this code: *Provided*,
 343 That notwithstanding the provisions of section five-d, article ten, chapter eleven of this code, or
 344 any other provision of this code, tax returns, tax return information and such other information as
 345 may be necessary to administer the tax credits and programs authorized and specified by this
 346 article and in this section may be exchanged between the Tax Commissioner and the West
 347 Virginia Development Office without restriction.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4B. PHYSICIAN/MEDICAL PRACTICIONER PROVIDER MEDICAID ACT.

§9-4B-1. Definitions.

1 The following words, when used in this article, have meanings ascribed to them in this
 2 section, except in those instances where the context clearly indicates a different meaning:

3 (a) "Board" means the physician/medical practitioner provider Medicaid enhancement
 4 board created to develop, review and recommend the physician/medical practitioner provider fee
 5 schedule;

6 (b) "Physician provider" means an allopathic or osteopathic physician, rendering services
 7 within this state and receiving reimbursement, directly as an individual provider or indirectly as an
 8 employee or agent of a medical clinic, partnership or other business entity;

9 (c) "Nurse practitioner" means a registered nurse qualified by virtue of his or her education
10 and credentials and approved by the West Virginia board of examiners for registered professional
11 nurses to practice as an advanced practice nurse independently or in a collaborative relationship
12 with a physician;

13 (d) "Nurse-midwife" means a qualified professional nurse registered with the West Virginia
14 board of examiners for registered professional nurses who by virtue of additional training is
15 specifically qualified to practice nurse-midwifery according to the statement of standards for the
16 practice of nurse-midwifery as set forth by the American college of nurse-midwives;

17 (e) "Physician ~~assistant~~ associate" means ~~an assistant to a physician who is a graduate of~~
18 ~~an approved program of instruction in primary health care or surgery, has attained a baccalaureate~~
19 ~~or master's degree, has passed the national certification examination and is qualified to perform~~
20 ~~direct patient care services under the supervision of~~ through collaboration with a physician. This
21 term has the same meaning as "physician assistant" or any other title the American Academy of
22 Physician Associates, or its successor association, currently designates for the profession that
23 formerly was referred to as a physician assistant.

24 (f) "Registered nurse first assistant" means one who:

25 (1) Holds a current active registered nurse licensure;

26 (2) Is certified in perioperative nursing; and

27 (3) Has successfully completed and holds a degree or certificate from a recognized
28 program which consists of:

29 (A) The association of operating room nurses, inc., care curriculum for the registered nurse
30 first assistant; and

31 (B) One year of post-basic nursing study, which shall include at least forty-five hours of
32 didactic instruction and one hundred twenty hours of clinical internship or its equivalent of two
33 college semesters;

34 A registered nurse who was certified by the certification board of perioperative nursing

35 before one thousand nine hundred ninety-seven is not required to fulfill the requirements of
36 subdivision (3) of this subsection;

37 (g) "Perioperative nursing" means a practice of nursing in which the nurse provides
38 preoperative, intraoperative and post-operative nursing care to surgical patients;

39 (h) "Secretary" means the secretary of the Department of Health and Human Resources;
40 and

41 (i) "Single state agency" means the single state agency for Medicaid in this state.

**§9-4B-2. Physician/medical practitioner provider Medicaid enhancement board;
continuation and composition.**

1 There is hereby continued the West Virginia physician/medical practitioner provider
2 Medicaid enhancement board to consist of eleven members. The board shall consist of ten
3 members, appointed by the Governor, and the secretary, or his or her designee, who shall serve as
4 an ex officio, nonvoting member. The members appointed by the Governor shall include five
5 allopathic physicians, one osteopathic physician, one nurse practitioner, one nurse-midwife, and
6 one physician ~~assistant~~ associate and one lay person. The Governor shall select four allopathic
7 physician board members from a list of eight recommendations submitted to the Governor by the
8 state medical association, one allopathic physician board member from a list of three
9 recommendations submitted to the Governor by the state academy of family physicians, the
10 osteopathic physician board member from three recommendations submitted to the Governor by
11 the state osteopathic society, the nurse practitioner from three recommendations submitted to the
12 Governor by the advanced nursing practice conference group of the West Virginia nurses
13 association, the nurse-midwife from three recommendations submitted to the Governor by the
14 West Virginia chapter of the American college of nurse-midwives, the physician ~~assistant~~
15 associate from three recommendations submitted to the Governor by the state physician ~~assistant~~
16 associate association and the lay board member, at his or her discretion. The respective
17 associations shall submit their recommendations to the Governor within five days of the effective

18 date of this article. The Governor shall make all appointments within 15 days from the receipt of all
 19 recommendations. After the initial appointment of the board, any appointment to fill a vacancy
 20 shall be for the unexpired term only, made in the same manner as the initial appointment, and the
 21 terms of all members expire on July 1, 1996. The board shall select a member to act as
 22 chairperson. The chairperson shall be the chief administrative officer and shall preside over official
 23 transactions of the board.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-2. HIV-related testing; methods for obtaining consent; billing patient health care providers.

1 (a) HIV-related testing should be recommended by healthcare providers as part of a
 2 routine screening for treatable conditions and as part of routine prenatal and perinatal care. A
 3 physician, dentist, nurse practitioner, nurse midwife, physician ~~assistant~~ associate or the
 4 commissioner may also request targeted testing for any of the following:

5 (1) When there is cause to believe that the test could be positive. Persons who engage in
 6 high risk behavior should be encouraged to be screened for HIV at least annually;

7 (2) When there is cause to believe that the test could provide information important in the
 8 care of the patient; or

9 (3) When there is cause to believe that the results of HIV-testing of samples of blood or
 10 body fluids from a source patient could provide information important in the care of medical or
 11 emergency responders or other persons identified in rules proposed by the department for
 12 approval by the Legislature in accordance with the provisions of article three, chapter twenty-nine-
 13 a of this code: *Provided*, That the source patient whose blood or body fluids is being tested
 14 pursuant to this section must have come into contact with a medical or emergency responder or

15 other person in such a way that a significant exposure has occurred;

16 (4) When there is no record of any HIV-related or other sexually transmitted disease testing
17 during pregnancy and the woman presents for labor and delivery.

18 (b) All health care providers, the bureau or a local health department that routinely bill
19 insurance companies or other third-party providers may bill for HIV-related testing and treatment.

20 (c) A patient consents to HIV-related testing when:

21 (1) The patient is informed either orally or in writing that:

22 (A) HIV-related testing will be performed as part of his or her routine care;

23 (B) HIV-related testing is voluntary; and

24 (C) He or she may decline HIV-related testing (opt-out); or

25 (2) The patient is informed that the patient's general consent for medical care includes
26 consent for HIV-related testing.

27 (d) A patient who opts-out of HIV-related testing must be informed that HIV-related testing
28 may be obtained anonymously at a local or county health department.

29 (e) Any person seeking an HIV-related test in a local or county health department or at
30 other HIV test setting provided by the commissioner who wishes to remain anonymous has the
31 right to do so and must be provided written informed consent through the use of a coded system
32 with no linking of individual identity to the test request or results.

33 (f) County or local health departments that routinely bill insurance companies or other third-
34 party payers for service may bill for an HIV-related test if the person requesting the test does not
35 request anonymity. No person may be refused a test at a local health department due to a lack of
36 insurance or due to a request to remain anonymous.

37 (g) A person may not decline or opt-out of HIV-related testing and the provisions of
38 subsections (a) and (c) of this section do not apply when:

39 (1) A health care provider or health facility procures, processes, distributes or uses:

40 (A) A human body part, including tissue and blood or blood products, donated for:

41 (i) A purpose specified under the uniform anatomical gift act; or

42 (ii) Transplant recipients;

43 (B) Semen provided for the purpose of artificial insemination and an HIV-related test is
44 necessary to ensure medical acceptability of a recipient or such gift or semen for the purposes
45 intended;

46 (2) A person is unable or unwilling to grant or withhold consent as the result of a
47 documented bona fide medical emergency, as determined by a treating physician taking into
48 account the nature and extent of the exposure to another person and the HIV-related test results
49 are necessary for medical diagnostic purposes to provide appropriate emergency care or
50 treatment to a medical or emergency responder, or any other person who has come into contact
51 with a source patient in such a way that a significant exposure necessitates HIV testing or to a
52 source patient who is unable to consent in accordance with rules proposed by the department for
53 approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code:
54 *Provided*, That necessary treatment may not be withheld pending HIV test results: *Provided*,
55 *however*, That all sampling and HIV testing of samples of blood and body fluids, without the
56 opportunity for the source patient or patient's representative to opt-out of the testing, shall be
57 through the use of a pseudonym and in accordance with rules proposed by the department for
58 approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code; or

59 (3) The performance of an HIV-related test for the purpose of research if the testing is
60 performed in a manner by which the identity of the test subject is not known and may not be
61 retrieved by the researcher.

62 (h) Mandated testing:

63 (1) The performance of any HIV-related testing that is or becomes mandatory by court
64 order or other legal process described herein does not require consent of the subject but will
65 include counseling.

66 (2) The court having jurisdiction of the criminal prosecution shall order that an HIV-related

67 test be performed on any persons charged with any of the following crimes or offenses:

68 (i) Prostitution; or

69 (ii) Sexual abuse, sexual assault, incest or sexual molestation.

70 (3) HIV-related tests performed on persons charged with prostitution, sexual abuse, sexual
71 assault, incest or sexual molestation shall be confidentially administered by a designee of the
72 bureau or the local or county health department having proper jurisdiction. The commissioner may
73 designate health care providers in regional jail facilities to administer HIV-related tests on such
74 persons if he or she determines it necessary and expedient.

75 (4) Costs associated with tests performed on persons charged with prostitution, sexual
76 abuse, sexual assault, incest or sexual molestation may be charged to the defendant or juvenile
77 respondent unless a court determines that the person charged with prostitution, sexual abuse,
78 sexual assault, incest or sexual molestation is pecuniary unable to pay.

79 (A) If a person charged with prostitution, sexual abuse, sexual assault, incest or sexual
80 molestation who is ordered to be tested is unable to pay, the cost of the HIV testing may be borne
81 by the regional jail or other correctional or juvenile facility, the bureau or the local health
82 department.

83 (B) If persons charged with prostitution, sexual abuse, sexual assault, incest or sexual
84 molestation who is ordered to be tested has health insurance, the local health department or other
85 providers performing the test may bill the health insurance of the person charged with prostitution,
86 sexual abuse, sexual assault, incest or sexual molestation for the cost of the test.

87 (C) A person charged with prostitution, sexual abuse, sexual assault, incest or sexual
88 molestation ordered to submit to a HIV-related test may not be permitted to remain anonymous
89 and a local health department may administer and bill for the test.

90 (5) When the Commissioner of the Bureau of Public Health knows or has reason to believe,
91 because of medical or epidemiological information, that a person, including, but not limited to, a
92 person such as an IV drug abuser, or a person who may have a sexually transmitted disease, or a

93 person who has sexually molested, abused or assaulted another, has HIV infection and is or may
94 be a danger to the public health, he or she may issue an order to:

95 (i) Require a person to be examined and tested to determine whether the person has HIV
96 infection;

97 (ii) Require a person with HIV infection to report to a qualified physician or health worker for
98 counseling; and

99 (iii) Direct a person with HIV infection to cease and desist from specified conduct which
100 endangers the health of others.

101 (6) If any person violates a cease and desist order issued pursuant to this section and, by
102 virtue of that violation, the person presents a danger to the health of others, the commissioner
103 shall apply to the circuit court of Kanawha County to enforce the cease and desist order by
104 imposing any restrictions upon the person that are necessary to prevent the specific conduct that
105 endangers the health of others.

106 (7) A person convicted of the offenses described in this section shall be required to
107 undergo HIV-related testing and counseling immediately upon conviction and the court having
108 jurisdiction of the criminal prosecution may not release the convicted person from custody and
109 shall revoke any order admitting the defendant to bail until HIV-related testing and counseling
110 have been performed and the result is known. The HIV-related test result obtained from the
111 convicted person is to be transmitted to the court and, after the convicted person is sentenced,
112 made part of the court record. If the convicted person is placed in the custody of the Division of
113 Corrections, the court shall transmit a copy of the convicted person's HIV-related test results to the
114 Division of Corrections. The HIV-related test results shall be closed and confidential and disclosed
115 by the court and the bureau only in accordance with the provisions of section three of this article.

116 (8) The prosecuting attorney shall inform the victim, or parent or guardian of the victim, at
117 the earliest stage of the proceedings of the availability of voluntary HIV-related testing and
118 counseling conducted by the bureau and that his or her best health interest would be served by

119 submitting to HIV-related testing and counseling. HIV-related testing for the victim shall be
120 administered at his or her request on a confidential basis and shall be administered in accordance
121 with the Centers for Disease Control and Prevention guidelines of the United States Public Health
122 Service in effect at the time of such request. The victim who obtains an HIV-related test shall be
123 provided with pre and post-test counseling regarding the nature, reliability and significance of the
124 HIV-related test and the confidential nature of the test. HIV-related testing and counseling
125 conducted pursuant to this subsection shall be performed by the designee of the commissioner of
126 the bureau or by any local or county health department having proper jurisdiction.

127 (9) If a person receives counseling or is tested under this subsection and is found to be HIV
128 infected and the person is not incarcerated, the person shall be referred by the health care
129 provider performing the counseling or testing for appropriate medical care and support services.
130 The local or county health departments or any other agency under this subsection may not be
131 financially responsible for medical care and support services.

132 (10) The commissioner of the bureau or his or her designees may require a person to
133 undergo an HIV or other sexually transmitted disease test if a person was possibly exposed to HIV
134 or other sexually transmitted disease infected blood or other body fluids as a result of receiving or
135 rendering emergency medical aid, providing funeral services or providing law-enforcement
136 services. The commissioner of the bureau or his or her designees may use the results to
137 determine the appropriate therapy, counseling and psychological support for the exposed person.

138 (11) If an HIV-related test required on persons convicted of prostitution, sexual abuse,
139 sexual assault, incest or sexual molestation results in a negative reaction, upon motion of the
140 state, the court having jurisdiction over the criminal prosecution may require the subject of the test
141 to submit to further HIV-related tests performed under the direction of the bureau in accordance
142 with the Centers for Disease Control and Prevention guidelines of the United States Public Health
143 Service in effect at the time of the motion of the state.

144 (12) The costs of mandated testing and counseling provided under this subsection and pre

145 and postconviction HIV-related testing and counseling provided the victim under the direction of
146 the bureau pursuant to this subsection shall be paid by the by the individual to be tested or
147 counseled or his or her medical insurance provider, if possible.

148 (13) The court having jurisdiction of the criminal prosecution shall order a person convicted
149 of prostitution, sexual abuse, sexual assault, incest or sexual molestation to pay restitution to the
150 state or the victim for the costs of any HIV-related testing and counseling provided the convicted
151 person and the victim, unless the court has determined the convicted person to be indigent.

152 (14) Any funds recovered by the state as a result of an award of restitution under this
153 subsection shall be paid into the State Treasury to the credit of a special revenue fund to be known
154 as the HIV-testing Fund which is hereby created. The moneys so credited to the fund may be used
155 solely by the bureau for the purposes of facilitating the performance of HIV-related testing and
156 counseling under the provisions of this article.

157 (i) Nothing in this section is applicable to any insurer regulated under chapter thirty-three of
158 this code: *Provided*, That the commissioner of insurance shall develop standards regarding
159 consent for use by insurers which test for the presence of the HIV antibody.

160 (j) Whenever consent of the subject to the performance of HIV-related testing is required
161 under this article, any such consent obtained, whether orally or in writing, shall be considered to be
162 a valid and informed consent if it is given after compliance with the provisions of subsection (c) of
163 this section.

ARTICLE 4F. EXPEDITED PARTNER THERAPY.

§16-4F-1. Definitions.

1 As used in this article, unless the context otherwise indicates, the following terms have the
2 following meanings:

3 (1) "Department" means the West Virginia Department of Health and Human Resources.

4 (2) "Expedited partner therapy" means prescribing, dispensing, furnishing or otherwise
5 providing prescription antibiotic drugs to the sexual partner or partners of a person clinically

6 diagnosed as infected with a sexually transmitted disease without physical examination of the
7 partner or partners.

8 (3) "Health care professional" means:

9 (A) An allopathic physician licensed pursuant to article three, chapter thirty of this code;

10 (B) An osteopathic physician licensed pursuant to article fourteen, chapter thirty of this
11 code;

12 (C) A physician ~~assistant~~ associate licensed pursuant to section four, article three-e,
13 chapter thirty of this code;

14 (D) An advanced practice registered nurse authorized with prescriptive authority pursuant
15 to section fifteen-a, article seven, chapter thirty of this code; or

16 (E) A pharmacist licensed pursuant to article five, chapter thirty of this code.

17 (4) "Sexually transmitted disease" means a disease that may be treated by expedited
18 partner therapy as determined by rule of the department.

ARTICLE 5. VITAL STATISTICS.

§16-5-19. Death registration.

1 (a) A certificate of death for each death which occurs in this state shall be filed with the
2 section of vital statistics, or as otherwise directed by the State Registrar, within five days after
3 death, and prior to final disposition, and shall be registered if it has been completed and filed in
4 accordance with this section.

5 (1) If the place of death is unknown, but the dead body is found in this state, the place
6 where the body was found shall be shown as the place of death.

7 (2) If the date of death is unknown, it shall be approximated. If the date cannot be
8 approximated, the date found shall be shown as the date of death.

9 (3) If death occurs in a moving conveyance in the United States and the body is first
10 removed from the conveyance in this state, the death shall be registered in this state and the place
11 where it is first removed shall be considered the place of death.

12 (4) If death occurs in a moving conveyance while in international waters or air space or in a
13 foreign country or its air space and the body is first removed from the conveyance in this state, the
14 death shall be registered in this state but the certificate shall show the actual place of death insofar
15 as can be determined.

16 (5) In all other cases, the place where death is pronounced shall be considered the place
17 where death occurred.

18 (b) The funeral director or other person who assumes custody of the dead body shall:

19 (1) Obtain the personal data from the next of kin or the best qualified person or source
20 available including the deceased person's social security number or numbers, which shall be
21 placed in the records relating to the death and recorded on the certificate of death;

22 (2) Within forty-eight hours after death, provide the certificate of death containing sufficient
23 information to identify the decedent to the physician nurse responsible for completing the medical
24 certification as provided in subsection (c) of this section; and

25 (3) Upon receipt of the medical certification, file the certificate of death: *Provided*, That for
26 implementation of electronic filing of death certificates, the person who certifies to cause of death
27 will be responsible for filing the electronic certification of cause of death as directed by the State
28 Registrar and in accordance with legislative rule.

29 (c) The medical certification shall be completed and signed within twenty-four hours after
30 receipt of the certificate of death by the physician, physician ~~assistant~~ associate or advanced
31 practice registered nurse in charge of the patient's care for the illness or condition which resulted
32 in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other
33 applicable provisions of this code.

34 (1) In the absence of the physician, physician ~~assistant~~ associate or advanced practice
35 registered nurse or with his or her approval, the certificate may be completed by his or her
36 associate physician, any physician who has been placed in a position of responsibility for any
37 medical coverage of the decedent, the chief medical officer of the institution in which death

38 occurred, or the physician who performed an autopsy upon the decedent, provided inquiry is not
39 required pursuant to chapter sixty-one, article twelve of this code.

40 (2) The person completing the cause of death shall attest to its accuracy either by
41 signature or by an approved electronic process.

42 (d) When inquiry is required pursuant to article twelve, chapter sixty-one or other
43 applicable provisions of this code, the state Medical Examiner or designee or county medical
44 examiner or county coroner in the jurisdiction where the death occurred or where the body was
45 found shall determine the cause of death and shall complete the medical certification within forty-
46 eight hours after taking charge of the case.

47 (1) If the cause of death cannot be determined within forty-eight hours after taking charge
48 of the case, the medical examiner shall complete the medical certification with a "Pending" cause
49 of death to be amended upon completion of medical investigation.

50 (2) After investigation of a report of death for which inquiry is required, if the state Medical
51 Examiner or designee or county medical examiner or county coroner decline jurisdiction, the state
52 Medical Examiner or designee or county medical examiner or county coroner may direct the
53 decedent's family physician or the physician who pronounces death to complete the certification of
54 death: Provided, That the physician is not civilly liable for inaccuracy or other incorrect statement
55 of death unless the physician willfully and knowingly provides information he or she knows to be
56 false.

57 (e) When death occurs in an institution and the person responsible for the completion of
58 the medical certification is not available to pronounce death, another physician may pronounce
59 death. If there is no physician available to pronounce death, then a designated licensed health
60 professional who views the body may pronounce death, attest to the pronouncement by signature
61 or an approved electronic process and, with the permission of the person responsible for the
62 medical certification, release the body to the funeral director or other person for final disposition:
63 Provided, That if the death occurs in an institution during court-ordered hospitalization, in a

64 correctional facility or under custody of law-enforcement authorities, the death shall be reported
65 directly to a medical examiner or coroner for investigation, pronouncement and certification.

66 (f) If the cause of death cannot be determined within the time prescribed, the medical
67 certification shall be completed as provided by legislative rule. The attending physician or medical
68 examiner, upon request, shall give the funeral director or other person assuming custody of the
69 body notice of the reason for the delay, and final disposition of the body may not be made until
70 authorized by the attending physician, medical examiner or other persons authorized by this
71 article to certify the cause of death.

72 (g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or
73 investigation provides additional information that would change the information on the certificate of
74 death from that originally reported, the certifier or any State Medical Examiner who provides such
75 inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file a
76 supplemental report of cause of death or other information with the section of vital statistics to
77 amend the record, but only for purposes of accuracy.

78 (h) When death is presumed to have occurred within this state but the body cannot be
79 located, a certificate of death may be prepared by the state Registrar only upon receipt of an order
80 of a court of competent jurisdiction which shall include the finding of facts required to complete the
81 certificate of death. The certificate of death will be marked "Presumptive" and will show on its face
82 the date of death as determined by the court and the date of registration, and shall identify the
83 court and the date of the order.

84 (i) The local registrar shall transmit each month to the county clerk of his or her county a
85 copy of the certificates of all deaths occurring in the county, and if any person dies in a county other
86 than the county within the state in which the person last resided prior to death, then the state
87 Registrar shall furnish a copy of the death certificate to the clerk of the county commission of the
88 county where the person last resided, from which copies the clerk shall compile a register of
89 deaths, in a form prescribed by the state Registrar. The register shall be a public record.

ARTICLE 5BB. DEVELOPMENT OF SCREENING PROTOCOLS FOR ADVERSE CHILDHOOD EXPERIENCES.

§16-5BB-1. Development of Screening Protocols for Adverse Childhood Experiences.

1 (a) The Commissioner of the Bureau for Public Health may form a workgroup to conduct a
2 study of adverse childhood experiences and their impact on the people of West Virginia. The
3 workgroup may be comprised of the following members:

4 (1) The Commissioner of the Bureau of Children and Families, or his or her designee;

5 (2) The Dean of the West Virginia University School of Medicine, or his or her designee;

6 (3) The Dean of the Marshall University Joan C. Edwards School of Medicine, or his or her
7 designee;

8 (4) The Dean of the West Virginia School of Osteopathic Medicine, or his or her designee;

9 (5) The Executive Director of the West Virginia Herbert Henderson Office of Minority
10 Affairs, or his or her designee;

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

12 (7) Up to three representatives of primary care providers chosen by the West Virginia
13 Primary Care Association;

14 (8) Up to three representatives of behavioral healthcare providers chosen by the West
15 Virginia Behavioral Healthcare Providers Association;

16 (9) Up to two members chosen by the Adverse Childhood Experiences Coalition of West
17 Virginia;

18 (10) One member chosen by the West Virginia Rural Health Association;

19 (11) One member chosen by the West Virginia Hospital Association;

20 (12) One member chosen by the West Virginia Nurses Association;

21 (13) One member chosen by the West Virginia Chapter of the American Academy of
22 Pediatrics;

- 23 (14) One member chosen by the West Virginia State Medical Association;
- 24 (15) One member chosen by the West Virginia Osteopathic Medical Association;
- 25 (16) One member chosen by the West Virginia Academy of Family Physicians;
- 26 (17) One member chosen by the West Virginia Association of Physician Assistants
- 27 Associates;
- 28 (18) One member chosen by the West Virginia Association of School Nurses;
- 29 (19) One member representing parents chosen by the West Virginia Circle of Parents
- 30 Network;
- 31 (20) One member chosen by the West Virginia Foster, Adoptive and Kinship Network;
- 32 (21) The Commissioner of the Bureau for Behavioral Health, or his or her designee;
- 33 (22) One representative of the West Virginia Defending Childhood Initiative, commonly
- 34 referred to as "Handle With Care," chosen by the West Virginia Children's Justice Task Force;
- 35 (23) One member chosen by the West Virginia Chapter of the National Association for the
- 36 Advancement of Colored People; and
- 37 (24) The West Virginia State Superintendent of Schools, or his or her designee.
- 38 (b) The Commissioner of the Bureau for Public Health may designate additional persons
- 39 who may participate in the meetings of the workgroup: *Provided*, That any such person must be
- 40 the administrative head of the office or division whose functions necessitate his or her inclusion in
- 41 this process.
- 42 (c) The workgroup may develop recommended guidance, tools, and protocols for primary
- 43 health care practitioners to undertake the following:
- 44 (1) Provide information to patients regarding the impact of adverse and positive childhood
- 45 experiences on physical and mental health, and the risks and benefits of screening patients for
- 46 adverse child experiences;
- 47 (2) Screen patients for adverse child experiences, childhood trauma, and positive
- 48 childhood experiences that may impact a patient's physical or mental health or the provision of

49 health care services to the patient; and

50 (3) Within the context of a comprehensive systems approach, provide clinical response
51 that medical providers should follow after screening, such as:

52 (A) Applying principles of trauma-informed care;

53 (B) Identification and treatment of adverse childhood experiences and associated
54 health conditions;

55 (C) Patient education about toxic stress and buffering interventions, including supportive
56 relationships, mental health treatment, exercise, sleep hygiene, healthy nutrition, and mindfulness
57 and meditation practices;

58 (D) Validation of existing strengths and protective factors;

59 (E) Referral to patient resources which may include, but are not limited to, counseling and
60 treatment programs, community-based medical and non-medical resources, and family support
61 programs; and

62 (F) Follow-up as necessary.

63 (d) The workgroup may develop recommendations for education and training requirements
64 to be completed for administering the screening process, trauma-informed care, and clinical
65 response as described in this section.

66 (e) The Bureau for Public Health may provide staff for the workgroup. The workgroup may
67 schedule one public hearing in each of the congressional districts in West Virginia as it relates to
68 the screening protocols for adverse childhood experiences. The workgroup may develop and
69 approve a final report by June 30, 2021, and a copy may be submitted to the Joint Committee on
70 Government and Finance of the Legislature and the Governor. The workgroup will sunset on
71 March 31, 2022.

72 (f) The Bureau for Public Health may develop screening protocols for adverse childhood
73 experiences and make recommendations in a report to be submitted to the Governor no later than
74 December 31, 2021: *Provided*, That prior to submission, the bureau may present its proposed

75 screening protocols for adverse childhood experiences to the Legislative Oversight Committee on
76 Health and Human Resources within 90 days after development of the drafts and prior to
77 submission of the final protocols to the Governor. The Legislative Oversight Committee on Health
78 and Human Resources shall have 90 days to review the standards and provide input to the
79 bureau, which shall consider such input when developing the final standards for submission to the
80 Governor. Upon submission to the Governor, the report may be distributed to all health care
81 provider organizations in the state for consideration for adoption.

82 (g) Any screening protocols for adverse childhood experiences drafted pursuant to this
83 section shall not become effective until on or after March 31, 2021.

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

§16-5H-2. Definitions.

1 "Chronic pain" means pain that has persisted after reasonable medical efforts have been
2 made to relieve the pain or cure its cause and that has continued, either continuously or
3 episodically, for longer than three continuous months. For purposes of this article, "chronic pain"
4 does not include pain directly associated with a terminal condition.

5 "Director" means the Director of the Office of Health Facility Licensure and Certification
6 within the Office of the Inspector General.

7 "Owner" means any person, partnership, association, or corporation listed as the owner of
8 a pain management clinic on the licensing forms required by this article.

9 "Pain management clinic" means all privately-owned pain management clinics, facilities, or
10 offices not otherwise exempted from this article and which meet both of the following criteria:

11 (1) Where in any month more than 50 percent of patients of the clinic are prescribed or
12 dispensed Schedule II opioids or other Schedule II controlled substances specified in rules
13 promulgated pursuant to this article for chronic pain resulting from conditions that are not terminal;
14 and

15 (2) The facility meets any other identifying criteria established by the secretary by rule.

16 "Physician" means an individual authorized to practice medicine or surgery or osteopathic
17 medicine or surgery in this state.

18 "Prescriber" means an individual who is authorized by law to prescribe drugs or drug
19 therapy related devices in the course of the individual's professional practice, including only a
20 medical or osteopathic physician authorized to practice medicine or surgery; a physician ~~assistant~~
21 associate or osteopathic physician ~~assistant~~ associate who holds a certificate to prescribe drugs;
22 or an advanced nurse practitioner who holds a certificate to prescribe.

23 "Secretary" means the Secretary of the West Virginia Department of Health and Human
24 Resources. The secretary may define in rules any term or phrase used in this article which is not
25 expressly defined.

§16-5H-4. Operational requirements.

1 (a) Any person, partnership, association or corporation that desires to operate a pain
2 management clinic in this state must submit to the director documentation that the facility meets all
3 of the following requirements:

4 (1) The clinic shall be licensed in this state with the secretary, the Secretary of State, the
5 State Tax Department and all other applicable business or license entities.

6 (2) The application shall list all owners of the clinic. At least one owner shall be a physician
7 actively licensed to practice medicine, surgery or osteopathic medicine or surgery in this state. The
8 clinic shall notify the secretary of any change in ownership within ten days of the change and must
9 submit a new application within the time frame prescribed by the secretary.

10 (3) Each pain management clinic shall designate a physician owner who shall practice at
11 the clinic and who will be responsible for the operation of the clinic. Within ten days after
12 termination of a designated physician, the clinic shall notify the director of the identity of another
13 designated physician for that clinic. Failing to have a licensed designated physician practicing at
14 the location of the clinic may be the basis for a suspension or revocation of the clinic license. The
15 designated physician shall:

16 (A) Have a full, active and unencumbered license to practice medicine, surgery or
17 osteopathic medicine or surgery in this state:

18 (B) Meet one of the following training requirements:

19 (i) Complete a pain medicine fellowship that is accredited by the Accreditation Council for
20 Graduate Medical Education or such other similar program as may be approved by the secretary;

21 or

22 (ii) Hold current board certification by the American Board of Pain Medicine or current
23 board certification by the American Board of Anesthesiology or such other board certification as
24 may be approved by the secretary.

25 (C) Practice at the licensed clinic location for which the physician has assumed
26 responsibility;

27 (D) Be responsible for complying with all requirements related to the licensing and
28 operation of the clinic;

29 (E) Supervise, control and direct the activities of each individual working or operating at the
30 facility, including any employee, volunteer or individual under contract, who provides treatment of
31 chronic pain at the clinic or is associated with the provision of that treatment. The supervision,
32 control and direction shall be provided in accordance with rules promulgated by the secretary.

33 (4) All persons employed by the facility shall comply with the requirements for the operation
34 of a pain management clinic established by this article or by any rule adopted pursuant to this
35 article.

36 (5) No person may own or be employed by or associated with a pain management clinic
37 who has previously been convicted of, or pleaded guilty to, any felony in this state or another state
38 or territory of the United States. All owners, employees, volunteers or associates of the clinic shall
39 undergo a criminal records check prior to operation of the clinic or engaging in any work, paid or
40 otherwise. The application for license shall include copies of the background check for each
41 anticipated owner, physician, employee, volunteer or associate. The secretary shall review the

42 results of the criminal records check and may deny licensure for any violation of this requirement.
43 The facility shall complete a criminal records check on any subsequent owner, physician,
44 employee, volunteer or associate of the clinic and submit the results to the secretary for continued
45 review.

46 (6) The clinic may not be owned by, nor may it employ or associate with, any physician or
47 prescriber:

48 (A) Whose Drug Enforcement Administration number has ever been revoked;

49 (B) Whose application for a license to prescribe, dispense or administer a controlled
50 substance has been denied by any jurisdiction; or

51 (C) Who, in any jurisdiction of this state or any other state or territory of the United States,
52 has been convicted of or plead guilty or nolo contendere to an offense that constitutes a felony for
53 receipt of illicit and diverted drugs, including controlled substances, as defined by section one
54 hundred one, article one, chapter sixty-a of this code.

55 (7) A person may not dispense any medication, including a controlled substance, as
56 defined by section one hundred one, article one, chapter sixty-a of this code, on the premises of a
57 licensed pain management clinic unless he or she is a physician or pharmacist licensed in this
58 state. Prior to dispensing or prescribing controlled substances, as defined by section one hundred
59 one, article one, chapter sixty-a of this code, at a pain management clinic, the treating physician
60 must access the Controlled Substances Monitoring Program database maintained by the Board of
61 Pharmacy to ensure the patient is not seeking controlled substances from multiple sources. If the
62 patient receives ongoing treatment, the physician shall also review the Controlled Substances
63 Monitoring Program database at each patient examination or at least every ninety days. The
64 results obtained from the Controlled Substances Monitoring Program database shall be
65 maintained with the patient's medical records.

66 (8) Each clinic location shall be licensed separately, regardless of whether the clinic is
67 operated under the same business name or management as another clinic.

68 (9) A pain management clinic shall not dispense to any patient more than a 72 hour supply
69 of a controlled substance, as defined by section one hundred one, article one, chapter sixty-a of
70 this code.

71 (10) The pain management clinic shall develop patient protocols, treatment plans and
72 profiles, as prescribed by the secretary by rule, and which shall include, but not be limited by, the
73 following guidelines:

74 (A) When a physician diagnoses an individual as having chronic pain, the physician may
75 treat the pain by managing it with medications in amounts or combinations that may not be
76 appropriate when treating other medical conditions. The physician's diagnosis shall be made after
77 having the individual evaluated by one or more other physicians who specialize in the treatment of
78 the area, system or organ of the body perceived as the source of the pain unless the individual has
79 been previously diagnosed as suffering from chronic pain and is referred to the pain management
80 clinic by such diagnosing physician. The physician's diagnosis and treatment decisions shall be
81 made according to accepted and prevailing standards for medical care.

82 (B) The physician shall maintain a record of all of the following:

83 (i) Medical history and physical examination of the individual;

84 (ii) The diagnosis of chronic pain, including signs, symptoms and causes;

85 (iii) The plan of treatment proposed, the patient's response to the treatment and any
86 modification to the plan of treatment;

87 (iv) The dates on which any medications were prescribed, dispensed or administered, the
88 name and address of the individual to or for whom the medications were prescribed, dispensed or
89 administered and the amounts and dosage forms for the drugs prescribed, dispensed or
90 administered;

91 (v) A copy of the report made by the physician to whom referral for evaluation was made.

92 (C) A physician, physician ~~assistant~~ associate, certified registered nurse anesthetist or
93 advanced nurse practitioner shall perform a physical examination of a patient on the same day that

94 the physician initially prescribes, dispenses or administers a controlled substance to a patient and
95 at least four times a year thereafter at a pain management clinic according to accepted and
96 prevailing standards for medical care.

97 (D) A physician authorized to prescribe controlled substances who practices at a pain
98 management clinic is responsible for maintaining the control and security of his or her prescription
99 blanks and any other method used for prescribing controlled substance pain medication. The
100 physician shall comply with all state and federal requirements for tamper-resistant prescription
101 paper. In addition to any other requirements imposed by statute or rule, the physician shall notify
102 the secretary in writing within 24 hours following any theft or loss of a prescription blank or breach
103 of any other method for prescribing pain medication.

104 (c) Upon satisfaction that an applicant has met all of the requirements of this article, the
105 secretary may issue a license to operate a pain management clinic. An entity that obtains this
106 license may possess, have custody or control of, and dispense drugs designated as Schedule II or
107 Schedule III in sections two hundred six or two hundred eight, article two, chapter sixty-a of this
108 code.

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

§16-5Y-5. Operational requirements.

1 (a) The medication-assisted treatment program shall be licensed and registered in this
2 state with the secretary, the Secretary of State, the State Tax Department, and all other applicable
3 business or licensing entities.

4 (b) The program sponsor need not be a licensed physician but shall employ a licensed
5 physician for the position of medical director, when required by the rules promulgated pursuant to
6 this article.

7 (c) Each medication-assisted treatment program shall designate a medical director. If the
8 medication-assisted treatment program is accredited by a Substance Abuse and Mental Health
9 Services Administration approved accrediting body that meets nationally accepted standards for

10 providing medication-assisted treatment, including the Commission on Accreditation of
11 Rehabilitation Facilities or the Joint Commission on Accreditation of Healthcare Organizations,
12 then the program may designate a medical director to oversee all facilities associated with the
13 accredited medication-assisted treatment program. The medical director shall be responsible for
14 the operation of the medication-assisted treatment program, as further specified in the rules
15 promulgated pursuant to this article. He or she may delegate the day-to-day operation of a
16 medication-assisted treatment program as provided in rules promulgated pursuant to this article.
17 Within 10 days after termination of a medical director, the medication-assisted treatment program
18 shall notify the director of the identity of another medical director for that program. Failure to have
19 a medical director practicing at the program may be the basis for a suspension or revocation of the
20 program license. The medical director shall:

21 (1) Have a full, active, and unencumbered license to practice allopathic medicine or
22 surgery from the West Virginia Board of Medicine or to practice osteopathic medicine or surgery
23 from the West Virginia Board of Osteopathic Medicine in this state and be in good standing and not
24 under any probationary restrictions;

25 (2) Meet both of the following training requirements:

26 (A) If the physician prescribes a partial opioid agonist, he or she shall complete the
27 requirements for the Drug Addiction Treatment Act of 2000; and

28 (B) Complete other programs and continuing education requirements as further described
29 in the rules promulgated pursuant to this article;

30 (3) Practice at the licensed or registered medication-assisted treatment program a
31 sufficient number of hours, based upon the type of medication-assisted treatment license or
32 registration issued pursuant to this article, to ensure regulatory compliance, and carry out those
33 duties specifically assigned to the medical director as further described in the rules promulgated
34 pursuant to this article;

35 (4) Be responsible for monitoring and ensuring compliance with all requirements related to

36 the licensing and operation of the medication-assisted treatment program;

37 (5) Supervise, control, and direct the activities of each individual working or operating at
38 the medication-assisted treatment program, including any employee, volunteer, or individual
39 under contract, who provides medication-assisted treatment at the program or is associated with
40 the provision of that treatment. The supervision, control, and direction shall be provided in
41 accordance with rules promulgated by the secretary; and

42 (6) Complete other requirements prescribed by the secretary by rule.

43 (d) Each medication-assisted treatment program shall designate counseling staff, either
44 employees, or those used on a referral-basis by the program, which meet the requirements of this
45 article and the rules promulgated pursuant to this article. The individual members of the
46 counseling staff shall have one or more of the following qualifications:

47 (1) Be a licensed psychiatrist;

48 (2) Certification as an alcohol and drug counselor;

49 (3) Certification as an advanced alcohol and drug counselor;

50 (4) Be a counselor, psychologist, marriage and family therapist, or social worker with a
51 master's level education with a specialty or specific training in treatment for substance use
52 disorders, as further described in the rules promulgated pursuant to this article;

53 (5) Under the direct supervision of an advanced alcohol and drug counselor, be a
54 counselor with a bachelor's degree in social work or another relevant human services field:
55 *Provided*, That the individual practicing with a bachelor's degree under supervision applies for
56 certification as an alcohol and drug counselor within three years of the date of employment as a
57 counselor;

58 (6) Be a counselor with a graduate degree actively working toward licensure or certification
59 in the individual's chosen field under supervision of a licensed or certified professional in that field
60 and/or advanced alcohol and drug counselor;

61 (7) Be a psych-mental health nurse practitioner or a psych-mental health clinical nurse

62 specialist; or

63 (8) Be a psychiatry CAQ-certified physician ~~assistant~~ associate.

64 (e) The medication-assisted treatment program shall be eligible for, and not prohibited
65 from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing a
66 patient for any medication-assisted treatment, a medication-assisted treatment program must
67 receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial
68 from a patient's insurer or West Virginia Medicaid denying coverage for such treatment: *Provided*,
69 That the secretary may grant a variance from this requirement pursuant to §15-5Y-6 of this code.
70 The program shall also document whether a patient has no insurance. At the option of the
71 medication-assisted treatment program, treatment may commence prior to billing.

72 (f) The medication-assisted treatment program shall apply for and receive approval as
73 required from the United States Drug Enforcement Administration, Center for Substance Abuse
74 Treatment, or an organization designated by Substance Abuse and Mental Health and Mental
75 Health Administration.

76 (g) All persons employed by the medication-assisted treatment program shall comply with
77 the requirements for the operation of a medication-assisted treatment program established within
78 this article or by any rule adopted pursuant to this article.

79 (h) All employees of an opioid treatment program shall furnish fingerprints for a state and
80 federal criminal records check by the Criminal Identification Bureau of the West Virginia State
81 Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a signed
82 authorization for the release of information and retention of the fingerprints by the Criminal
83 Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall
84 be subject to the provisions of §16-49-1 *et seq.* of this code and subsequent rules promulgated
85 thereunder.

86 (i) The medication-assisted treatment program shall not be owned by, nor shall it employ or
87 associate with, any physician or prescriber:

88 (1) Whose Drug Enforcement Administration number is not currently full, active, and
89 unencumbered;

90 (2) Whose application for a license to prescribe, dispense, or administer a controlled
91 substance has been denied by and is not full, active, and unencumbered in any jurisdiction; or

92 (3) Whose license is anything other than a full, active, and unencumbered license to
93 practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic
94 medicine or surgery by the West Virginia Board of Osteopathic Medicine in this state, and who is in
95 good standing and not under any probationary restrictions.

96 (j) A person may not dispense any medication-assisted treatment medication, including a
97 controlled substance as defined by §60A-1-101 of this code, on the premises of a licensed
98 medication-assisted treatment program, unless he or she is a physician or pharmacist licensed in
99 this state and employed by the medication-assisted treatment program unless the medication-
100 assisted treatment program is a federally certified narcotic treatment program. Prior to dispensing
101 or prescribing medication-assisted treatment medications, the treating physician must access the
102 Controlled Substances Monitoring Program Database to ensure the patient is not seeking
103 medication-assisted treatment medications that are controlled substances from multiple sources
104 and to assess potential adverse drug interactions, or both. Prior to dispensing or prescribing
105 medication-assisted treatment medications, the treating physician shall also ensure that the
106 medication-assisted treatment medication utilized is related to an appropriate diagnosis of a
107 substance use disorder and approved for such usage. The physician shall also review the
108 Controlled Substances Monitoring Program Database no less than quarterly and at each patient's
109 physical examination. The results obtained from the Controlled Substances Monitoring Program
110 Database shall be maintained with the patient's medical records.

111 (k) A medication-assisted treatment program responsible for medication administration
112 shall comply with:

113 (1) The West Virginia Board of Pharmacy regulations;

- 114 (2) The West Virginia Board of Examiners for Registered Professional Nurses regulations;
115 (3) All applicable federal laws and regulations relating to controlled substances; and
116 (4) Any requirements as specified in the rules promulgated pursuant to this article.

117 (l) Each medication-assisted treatment program location shall be licensed separately,
118 regardless of whether the program is operated under the same business name or management as
119 another program.

120 (m) The medication-assisted treatment program shall develop and implement patient
121 protocols, treatment plans, or treatment strategies and profiles, which shall include, but not be
122 limited by, the following guidelines:

123 (1) When a physician diagnoses an individual as having a substance use disorder, the
124 physician may treat the substance use disorder by managing it with medication in doses not
125 exceeding those approved by the United States Food and Drug Administration as indicated for the
126 treatment of substance use disorders and not greater than those amounts described in the rules
127 promulgated pursuant to this article. The treating physician and treating counselor's diagnoses
128 and treatment decisions shall be made according to accepted and prevailing standards for
129 medical care;

130 (2) The medication-assisted treatment program shall maintain a record of all of the
131 following:

132 (A) Medical history and physical examination of the individual;

133 (B) The diagnosis of substance use disorder of the individual;

134 (C) The plan of treatment proposed, the patient's response to the treatment, and any
135 modification to the plan of treatment;

136 (D) The dates on which any medications were prescribed, dispensed, or administered, the
137 name and address of the individual for whom the medications were prescribed, dispensed, or
138 administered, and the amounts and dosage forms for any medications prescribed, dispensed, or
139 administered;

140 (E) A copy of the report made by the physician or counselor to whom referral for evaluation
141 was made, if applicable; and

142 (F) A copy of the coordination of care agreement, which is to be signed by the patient,
143 treating physician, and treating counselor. If a change of treating physician or treating counselor
144 takes place, a new agreement must be signed. The coordination of care agreement must be
145 updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not
146 updated, this review must be documented in the patient's record. The coordination of care
147 agreement will be provided in a form prescribed and made available by the secretary;

148 (3) Medication-assisted treatment programs shall report information, data, statistics, and
149 other information as directed in this code, and the rules promulgated pursuant to this article to
150 required agencies and other authorities;

151 (4) A prescriber authorized to prescribe a medication-assisted treatment medication who
152 practices at a medication-assisted treatment program is responsible for maintaining the control
153 and security of his or her prescription blanks and any other method used for prescribing a
154 medication-assisted treatment medication. The prescriber shall comply with all state and federal
155 requirements for tamper-resistant prescription paper. In addition to any other requirements
156 imposed by statute or rule, the prescriber shall notify the secretary and appropriate law-
157 enforcement agencies in writing within 24 hours following any theft or loss of a prescription blank
158 or breach of any other method of prescribing a medication-assisted treatment medication; and

159 (5) The medication-assisted treatment program shall have a drug testing program to
160 ensure a patient is in compliance with the treatment strategy.

161 (n) Medication-assisted treatment programs shall only prescribe, dispense, or administer
162 liquid methadone to patients pursuant to the restrictions and requirements of the rules
163 promulgated pursuant to this article.

164 (o) The medication-assisted treatment program shall immediately notify the secretary, or
165 his or her designee, in writing of any changes to its operations that affect the medication-assisted

166 treatment program's continued compliance with the certification and licensure requirements.

167 (p) If a physician treats a patient with more than 16 milligrams per day of buprenorphine
168 then clear medical notes shall be placed in the patient's medical file indicating the clinical reason
169 or reasons for the higher level of dosage.

170 (q) If a physician is not the patient's obstetrical or gynecological provider, the physician
171 shall consult with the patient's obstetrical or gynecological provider to the extent possible to
172 determine whether the prescription is appropriate for the patient.

173 (r) A practitioner providing medication-assisted treatment may perform certain aspects of
174 telehealth if permitted under his or her scope of practice.

175 (s) The physician shall follow the recommended manufacturer's tapering schedule for the
176 medication-assisted treatment medication. If the schedule is not followed, the physician shall
177 document in the patient's medical record and the clinical reason why the schedule was not
178 followed. The secretary may investigate a medication-assisted treatment program if a high
179 percentage of its patients are not following the recommended tapering schedule.

ARTICLE 5DD. COLLECTION OF DATA.

§16-5DD-1. Establishing collection guidelines for Parkinson's disease data.

1 (a) West Virginia University may collect data on the incidence of Parkinson's disease in
2 West Virginia and other epidemiological data as required by this article.

3 (b) These terms are defined:

4 "Parkinson's disease" means a chronic and progressive neurologic disorder resulting from
5 deficiency of the neurotransmitter dopamine as the consequence of specific degenerative
6 changes in the area of the brain called the basal ganglia. It is characterized by tremor at rest, slow
7 movements, muscle rigidity, stooped posture, and unsteady or shuffling gait.

8 "Parkinsonisms" means related conditions that cause a combination of the movement
9 abnormalities seen in Parkinson's disease, such as tremor at rest, slow movement, muscle rigidity,
10 impaired speech or muscle stiffness, which often overlap with and can evolve from what appears

11 to be Parkinson's disease. These include: Multiple System Atrophy (MSA), Dementia with Lewy
12 Bodies (DLB), Corticobasal Degeneration (CBD), and Progressive Supranuclear Palsy (PSP).

13 (c) The registry and system of collection and dissemination of information shall be under
14 the direction of West Virginia University, who may enter into contracts, grants, or other agreements
15 as are necessary for the conduct of the program.

16 (d) All patients diagnosed with Parkinson's disease or related Parkinsonisms, as advised
17 by an Advisory Committee, shall be provided a notice regarding the collection of information and
18 patient data on Parkinson's disease. Patients who do not wish to participate in the collection of
19 data for purposes of research in this registry shall affirmatively opt-out in writing after an
20 opportunity to review the documents and ask questions. A patient may not be forced to participate
21 in this registry.

22 (e) (1) West Virginia University shall establish a Parkinson's Disease Registry Advisory
23 Committee to:

24 (A) Assist in the development and implementation of the registry which may include a
25 system for the collection and dissemination of information determining the incidence and
26 prevalence of Parkinson's disease and related Parkinsonisms;

27 (B) Determine what data shall be collected; and

28 (C) Generally, advise WVU.

29 (2) Membership of the committee may include:

30 (A) Neurologists from WVU, Marshall, and Charleston Area Medical Center;

31 (B) A movement disorder specialist;

32 (C) A primary care physician;

33 (D) A physician informaticist;

34 (E) Parkinson's disease patients;

35 (F) Public health staff;

36 (G) Population health researchers familiar with registries;

37 (H) Parkinson's disease researchers; and

38 (I) Anyone else West Virginia University deems necessary.

39 (f) Parkinson's disease and related Parkinsonisms shall be reported, but the mere
40 incidence of a patient with Parkinson's shall be the sole required information for this registry for
41 any patient who chooses not to participate. For the subset of patients who choose not to
42 participate, further data may not be reported to the registry.

43 (g) A hospital, facility, physician, surgeon, physician ~~assistant~~ associate, and nurse
44 practitioners, or other health care provider deemed necessary by West Virginia University
45 diagnosing or providing treatment to Parkinson's disease or Parkinsonism patients, shall report
46 each case of Parkinson's disease and Parkinsonisms to West Virginia University in a format
47 prescribed by the university. West Virginia University may enter into data sharing contracts with
48 data reporting entities and their associated electronic medical record systems vendors to securely
49 and confidentially receive information related to Parkinson's disease testing, diagnosis, and
50 treatment.

51 (h) West Virginia University may enter into agreements to furnish data collected in this
52 registry to other states' Parkinson's disease registries, federal Parkinson's disease control
53 agencies, local health officers, or health researchers for the study of Parkinson's disease. Before
54 confidential information is disclosed to those agencies, officers, researchers, or out-of-state
55 registries, the requesting entity shall agree in writing to maintain the confidentiality of the
56 information, and in the case of researchers, shall also do both of the following:

57 (1) Obtain approval of their committee for the protection of human subjects established in
58 accordance with Part 46 (commencing with Section 46.101) of Title 45 of the Code of Federal
59 Regulations; and

60 (2) Provide documentation to West Virginia University that demonstrates to the university's
61 satisfaction that the entity has established the procedures and ability to maintain the confidentiality
62 of the information.

63 (i) Except as otherwise provided in this section, all information collected pursuant to this
64 section shall be confidential. For purposes of this section, this information shall be referred to as
65 confidential information.

66 (j) Notwithstanding any other law, a disclosure authorized by this section shall include only
67 the information necessary for the stated purpose of the requested disclosure, used for the
68 approved purpose, and not be further disclosed.

69 (k) Provided the security of confidentiality has been documented, the furnishing of
70 confidential information to West Virginia University or its authorized representative in accordance
71 with this section shall not expose any person, agency, or entity furnishing information to liability,
72 and shall not be considered a waiver of any privilege or a violation of a confidential relationship.

73 (l) West Virginia University shall maintain an accurate record of all persons who are given
74 access to confidential information. The record shall include the name of the person authorizing
75 access; name, title, address, and organizational affiliation of persons given access; dates of
76 access; and, the specific purpose for which information is to be used. The record of access shall
77 be open to public inspection during normal operating hours of the university.

78 (m) Notwithstanding any other law, the confidential information shall not be available for
79 subpoena, shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal,
80 administrative, or other proceeding. The confidential information shall not be deemed admissible
81 as evidence in any civil, criminal, administrative, or other tribunal or court for any reason. This
82 subsection does not prohibit the publication by West Virginia University of reports and statistical
83 compilations that do not in any way identify individual cases or individual sources of information.
84 Notwithstanding the restrictions in this subsection, the individual to whom the information pertains
85 shall have access to his or her own information.

86 (n) This section does not preempt the authority of facilities or individuals providing
87 diagnostic or treatment services to patients with Parkinson's disease to maintain their own facility-
88 based Parkinson's disease registries

ARTICLE 15. STATE HOUSING LAW.

§16-15-19. Power to issue bonds; how bonds secured.

1 An authority shall have power to issue bonds from time to time, in its discretion, for any of
 2 its corporate purposes. An authority shall also have power to issue or exchange refunding bonds
 3 for the purpose of paying, retiring, extending or renewing bonds previously issued by it. An
 4 authority may issue such types of bonds as it may determine, including without limiting the
 5 generality of the foregoing, bonds on which the principal and interest are payable from income and
 6 revenues of the authority and from grants or contributions from the federal government or other
 7 source. Such income and revenues securing the bonds may be: Exclusively the income and
 8 revenues of the housing developments financed, in whole or in part, with the proceeds of such
 9 bonds; exclusively the income and revenues of certain designated housing developments,
 10 whether or not they are financed, in whole or in part, with the proceeds of such bonds; or the
 11 income and revenues of the authority generally. Any such bonds may be additionally secured by a
 12 pledge of any income or revenues of the authority, or a mortgage of any housing development,
 13 developments or other property of the authority.

ARTICLE 19. ANATOMICAL GIFT ACT.

§16-19-3. Definitions.

1 As used in this article:

2 "Adult" means an individual who is at least 18 years of age.

3 "Agent" means an individual:

4 (1) Authorized by a medical power of attorney to make health care decisions on behalf of a
 5 prospective donor; or

6 (2) Expressly authorized by any other record signed by the donor to make an anatomical
 7 gift on his or her behalf.

8 "Anatomical gift" means a donation of all or part of a human body, to take effect after the

9 donor's death, for the purpose of transplantation, therapy, research, or education.

10 "Authorized person" means a person other than the donor who is authorized to make an
11 anatomical gift of the donor's body or part by §16-19-4 or §16-19-9 of this code.

12 "Certification of death" means a written pronouncement of death by an attending
13 physician. Certification is required before an attending physician can allow removal of any part
14 from the decedent's body for transplant purposes.

15 "Decedent" means a deceased individual whose body is or may be the source of an
16 anatomical gift. The term "decedent" includes a stillborn infant and, subject to restrictions imposed
17 by law other than this article, a fetus.

18 "Disinterested witness" means a witness other than the spouse, child, parent, sibling,
19 grandchild, grandparent, or guardian of, or another adult who exhibited special care and concern
20 for, an individual who has made, amended, revoked, or refused to make an anatomical gift. The
21 term "disinterested witness" does not include a person to whom an anatomical gift may pass
22 pursuant to §16-19-11 of this code.

23 "Document of gift" means a donor card or other record used to make an anatomical gift.
24 The term includes a statement or symbol on a driver's license, identification card, hunting or
25 fishing license, or donor registry.

26 "Donor" means an individual whose body or part is the subject of an anatomical gift.

27 "Donor registry" means a database that contains records of anatomical gifts and
28 amendments to, or revocations, of anatomical gifts.

29 "Driver's license" means a license or permit issued by the Division of Motor Vehicles to
30 operate a vehicle.

31 "Eye bank" means a person licensed, accredited, or regulated under federal or state law to
32 engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or
33 portions of human eyes.

34 "Guardian" means a person appointed by a court to make decisions regarding the support,

35 care, education, health, or welfare of an individual. The term "guardian" does not include guardian
36 ad litem.

37 "Hunting or fishing license" means a license issued by the Division of Natural Resources
38 pursuant to §20-2-1 et seq. of this code, for hunting and fishing in the state of West Virginia.

39 "Hospital" means a facility licensed as a hospital under the law of any state or a facility
40 operated as a hospital by the United States, a state, or a subdivision of a state.

41 "Identification card" means an identification card issued by the Division of Motor Vehicles
42 pursuant to §17B-2-1 of this code.

43 "Know" means to have actual knowledge. It does not include constructive notice and other
44 forms of imputed knowledge.

45 "Medical examiner" means an individual appointed pursuant to §61-12-3 et seq. of this
46 code to perform death investigations and to establish the cause and manner of death. The term
47 "medical examiner" includes any person designated by the medical examiner to perform any
48 duties required by this article.

49 "Minor" means an individual who is under 18 years of age.

50 "Organ procurement organization" means a nonprofit entity designated by the Secretary of
51 the United States Department of Health and Human Services as an organ procurement
52 organization pursuant to 42 U.S.C. §273(b).

53 "Parent" means another person's natural or adoptive mother or father whose parental
54 rights have not been terminated by a court of law.

55 "Part" means an organ, an eye, or tissue of a human being. The term does not include the
56 whole body.

57 "Person" means an individual, corporation, business trust, estate, trust, partnership,
58 limited liability company, association, joint venture, public corporation, government or
59 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

60 "Physician" means an individual authorized to practice medicine or osteopathy under the

61 law of any state.

62 "Physician ~~assistant~~ associate" has the meaning provided in §30-3E-1 of this code.

63 "Procurement organization" means an eye bank, organ procurement organization, or
64 tissue bank.

65 "Prospective donor" means an individual who is dead or near death and has been
66 determined by a procurement organization to have a part that could be medically suitable for
67 transplantation, therapy, research, or education. The term "prospective donor" does not include an
68 individual who has made a refusal.

69 "Reasonably available" means able to be contacted by a procurement organization without
70 undue effort and willing and able to act in a timely manner consistent with existing medical criteria
71 necessary for the making of an anatomical gift.

72 "Recipient" means an individual into whose body a decedent's part has been or is intended
73 to be transplanted.

74 "Record" means information that is inscribed on a tangible medium or that is stored in an
75 electronic or other medium and is retrievable in perceivable form.

76 "Revocation" means the affirmative declaration of the potential donor's withdrawal of their
77 decision to make or not make a document of gift. It does not have the same meaning as a refusal
78 but only establishes that the potential donor chooses not to make an affirmative declaration of their
79 wishes.

80 "Refusal" means a record created under §16-19-7 of this code that expressly states an
81 individual's intent to bar other persons from making an anatomical gift of his or her body or part.

82 "Sign" means to execute or adopt a tangible symbol or attach to or logically associate with
83 the record an electronic symbol, sound or process, with the present intent to authenticate or adopt
84 a record.

85 "State" means a state of the United States, the District of Columbia, Puerto Rico, the
86 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the

87 United States.

88 "Surrogate" means an individual 18 years of age or older who is reasonably available, is
89 willing to make health care decisions on behalf of an incapacitated person, possesses the capacity
90 to make health care decisions, and is identified or selected by the attending physician or advanced
91 nurse practitioner in accordance with §16-30-1 *et seq.* of this code as the person who is to make
92 those decisions in accordance with the provisions of this article.

93 "Technician" means an individual qualified to remove or process parts by an organization
94 that is licensed, accredited, or regulated under federal or state law. The term "technician" includes
95 an enucleator, *i.e.*, an individual who removes or processes eyes or parts of eyes.

96 "Tissue" means a portion of the human body other than an organ or an eye. The term
97 "tissue" does not include blood unless the blood is donated for the purpose of research or
98 education.

99 "Tissue bank" means a person that is licensed, accredited, or regulated under federal or
100 state law to engage in the recovery, screening, testing, processing, storage, or distribution of
101 tissue.

102 "Transplant hospital" means a hospital that furnishes organ transplants and other medical
103 and surgical specialty services required for the care of transplant patients.

§16-19-14. Rights and duties of procurement organization and others.

1 (a) When a hospital refers an individual at or near death to a procurement organization, the
2 organization shall make a reasonable search of the records of the Division of Motor Vehicles and
3 any donor registry it knows of for the geographical area in which the individual resides to ascertain
4 whether the individual has made an anatomical gift.

5 (b) The Division of Motor Vehicles shall allow a procurement organization reasonable
6 access to information in the division's records to ascertain whether an individual at or near death is
7 a donor. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for
8 promulgation pursuant to §29A-3-1 *et seq.* of this code to facilitate procurement agencies' access

9 to records pursuant to this subsection.

10 (c) When a hospital refers an individual at or near death to a procurement organization, the
11 organization may conduct any reasonable examination necessary to ensure the medical suitability
12 of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research,
13 or education from a donor or a prospective donor. During the examination period, measures
14 necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or
15 procurement organization knows that the prospective donor expressed a contrary intent.

16 (d) Unless prohibited by law, at any time after a donor's death, a person to whom a
17 decedent's part passes under §16-19-11 of this code may conduct any reasonable examination
18 necessary to ensure the medical suitability of the body or part for its intended purpose.

19 (e) Unless prohibited by law, an examination under subsection (c) or (d) of this section may
20 include an examination of all medical and dental records of the donor or prospective donor.

21 (f) Upon the death of a minor who was a donor or had signed a refusal, unless a
22 procurement organization knows the minor is emancipated, the procurement organization shall
23 conduct a reasonable search for the parents of the minor and provide the parents with an
24 opportunity to revoke or amend the anatomical gift or revoke the refusal.

25 (g) Upon referral by a hospital under subsection (a) of this section, a procurement
26 organization shall make a reasonable search for any person listed in §16-19-9 of this code having
27 priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization
28 receives information that an anatomical gift to any other person was made, amended, or revoked,
29 it shall promptly advise the other person of all relevant information.

30 (h) Except as provided in §16-19-22 of this code, the rights of the person to whom a part
31 passes under §16-19-11 of this code are superior to the rights of all others. A person may accept or
32 reject an anatomical gift, in whole or in part. Subject to the terms of the document of gift and this
33 article, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or
34 cremation, and use of remains in a funeral service. If the gift is of a part, the person to whom the

35 part passes under §16-19-11 of this code shall, upon the death of the donor and before
36 embalming, burial, or cremation, cause the part to be removed without unnecessary mutilation.

37 (i) Neither the physician or the physician ~~assistant~~ associate who attends the decedent at
38 death, nor the physician or the physician ~~assistant~~ associate who determines the time of death,
39 may participate in the procedures for removing or transplanting a part from the decedent.

40 (j) A physician or technician may remove a donated part from the body of a donor that the
41 physician or technician is qualified to remove.

42 (k) A medical examiner shall cooperate with any procurement organization to maximize the
43 opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or
44 education.

45 (l) A part may not be removed from the body of a decedent under a medical examiner's
46 jurisdiction for transplantation, therapy, research, or education, nor delivered to a person for
47 research or education, unless the part is the subject of an anatomical gift.

48 (m) Upon the request of a procurement organization, the medical examiner shall release to
49 the procurement organization the name, contact information, name of the next of kin, and available
50 medical and social history of a decedent whose body is under the medical examiner's jurisdiction.
51 If the decedent's body or part is medically suitable for transplantation, therapy, research, or
52 education, the medical examiner shall release the post-mortem examination results to the
53 procurement organization. The procurement organization may not make a subsequent disclosure
54 of the post-mortem examination results or other information received from the medical examiner
55 unless the subsequent disclosure is relevant to transplantation, therapy, research, or education.

56 (n) If a hospital refers an individual whose death is imminent or who has died in a hospital
57 to an organ procurement organization, and the organ procurement organization, in consultation
58 with the individual's attending physician or a designee, determines based upon a medical record
59 review and other information supplied by the individual's attending physician or a designee, that
60 the individual may be a prospective donor; and the individual:

61 (1) Has not indicated in any document an intention to either limit the anatomical gifts of the
62 individual to parts of the body which do not require a ventilator or other life-sustaining measures, or

63 (2) Has not indicated in any document an intention to deny making or refusing to make an
64 anatomical gift; or

65 (3) Amended or revoked an anatomical gift in any document, the organ procurement
66 organization may conduct a blood or tissue test or minimally invasive examination which is
67 reasonably necessary to evaluate the medical suitability of a body part that is or may be the
68 subject of an anatomical gift.

69 (o) Testing and examination conducted pursuant to subsection (n) shall comply with a
70 denial or refusal to make an anatomical gift or any limitation expressed by the individual with
71 respect to the part of the body to donate or a limitation the provision of a ventilator or other life-
72 sustaining measures, or a revocation or amendment to an anatomical gift. The results of tests and
73 examinations conducted pursuant to subsection (n) shall be used or disclosed only:

74 (1) To evaluate medical suitability for donation and to facilitate the donation process; and

75 (2) As otherwise required or permitted by law.

76 (p) A hospital may not withdraw or withhold any measures necessary to maintain the
77 medical suitability of a body part that may be the subject of an anatomical gift until the organ
78 procurement organization or designated requestor, as appropriate, has had the opportunity to
79 advise the applicable persons under this article of the option to make an anatomical gift and has
80 received or been denied authorization to proceed with recovery of the part.

81 (q) Subject to the individual's wishes under §16-19-11(c)(3) of this code, after an
82 individual's death, persons who may receive anatomical gift pursuant to §16-19-11 of this code
83 may conduct any test or examination reasonably necessary to evaluate the medical suitability of
84 the body or part for its intended purpose.

85 (r) The provisions of this section may not be construed to preclude a medical examiner
86 from performing an investigation of a decedent under the medical examiner's jurisdiction.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-3. Definitions.

1 For the purposes of this article:

2 "Actual knowledge" means the possession of information of the person's wishes
3 communicated to the health care provider orally or in writing by the person, the person's medical
4 power of attorney representative, the person's health care surrogate, or other individuals resulting
5 in the health care provider's personal cognizance of these wishes. Constructive notice and other
6 forms of imputed knowledge are not actual knowledge.

7 "Adult" means a person who is 18 years of age or older, an emancipated minor who has
8 been established as such pursuant to the provisions of §49-4-115 of this code, or a mature minor.

9 "Advanced nurse practitioner" means a registered nurse with substantial theoretical
10 knowledge in a specialized area of nursing practice and proficient clinical utilization of the
11 knowledge in implementing the nursing process, and who has met the further requirements of the
12 West Virginia Board of Examiners for Registered Professional Nurses rule, advanced practice
13 registered nurse, 19 CSR 7, who has a mutually agreed upon association in writing with a
14 physician, and has been selected by or assigned to the person and has primary responsibility for
15 treatment and care of the person.

16 "Attending physician" means the physician selected by or assigned to the person who has
17 primary responsibility for treatment and care of the person and who is a licensed physician. If more
18 than one physician shares that responsibility, any of those physicians may act as the attending
19 physician under this article.

20 "Capable adult" means an adult who is physically and mentally capable of making health
21 care decisions and who is not considered a protected person pursuant to Chapter 44A of this
22 code.

23 "Close friend" means any adult who has exhibited significant care and concern for an
24 incapacitated person who is willing and able to become involved in the incapacitated person's

25 health care and who has maintained regular contact with the incapacitated person so as to be
26 familiar with his or her activities, health, and religious and moral beliefs.

27 "Death" means a finding made in accordance with accepted medical standards of either:
28 (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible
29 cessation of all functions of the entire brain, including the brain stem.

30 "Guardian" means a person appointed by a court pursuant to chapter 44A of this code who
31 is responsible for the personal affairs of a protected person and includes a limited guardian or a
32 temporary guardian.

33 "Health care decision" means a decision to give, withhold, or withdraw informed consent to
34 any type of health care, including, but not limited to, medical and surgical treatments, including life-
35 prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a
36 nursing home or other facility, home health care, and organ or tissue donation.

37 "Health care facility" means a facility commonly known by a wide variety of titles, including,
38 but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility,
39 physicians' office and clinic, extended care facility operated in connection with a hospital, nursing
40 home, a hospital extended care facility operated in connection with a rehabilitation center,
41 hospice, home health care, or other facility established to administer health care in its ordinary
42 course of business or practice.

43 "Health care provider" means any licensed physician, dentist, nurse, physician ~~assistant~~
44 associate, paramedic, psychologist, or other person providing medical, dental, nursing,
45 psychological, or other health care services of any kind.

46 "Incapacity" means the inability because of physical or mental impairment to appreciate
47 the nature and implications of a health care decision, to make an informed choice regarding the
48 alternatives presented, and to communicate that choice in an unambiguous manner.

49 "Life-prolonging intervention" means any medical procedure or intervention that, when
50 applied to a person, would serve to artificially prolong the dying process. Life-prolonging

51 intervention includes, among other things, nutrition and hydration administered intravenously or
52 through a feeding tube. The term "life-prolonging intervention" does not include the administration
53 of medication or the performance of any other medical procedure considered necessary to provide
54 comfort or to alleviate pain.

55 "Living will" means a written, witnessed advance directive governing the withholding or
56 withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with
57 the requirements of §16-30-4 of this code.

58 "Mature minor" means a person, less than 18 years of age, who has been determined by a
59 qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the
60 capacity to make health care decisions.

61 "Medical information" or "medical records" means and includes without restriction any
62 information recorded in any form of medium that is created or received by a health care provider,
63 health care facility, health plan, public health authority, employer, life insurer, school, or university
64 or health care clearinghouse that relates to the past, present, or future physical or mental health of
65 the person, the provision of health care to the person, or the past, present, or future payment for
66 the provision of health care to the person.

67 "Medical power of attorney representative" or "representative" means a person, 18 years
68 of age or older, appointed by another person to make health care decisions pursuant to §16-30-6
69 of this code or similar act of another state and recognized as valid under the laws of this state.

70 "Parent" means a person who is another person's natural or adoptive mother or father or
71 who has been granted parental rights by valid court order and whose parental rights have not been
72 terminated by a court of law.

73 "Person" means an individual, corporation, business trust, trust, partnership, association,
74 government, governmental subdivision or agency, or any other legal entity.

75 "Portable orders for scope of treatment (POST) form" means a standardized form
76 containing orders by a qualified physician, an advanced practice registered nurse, or a physician

77 ~~assistant~~ associate that details a person's life-sustaining wishes as provided by §16-30-25 of this
78 code.

79 "Principal" means a person who has executed a living will, medical power of attorney, or
80 combined medical power of attorney and living will.

81 "Protected person" means an adult who, pursuant to chapter 44A of this code, has been
82 found by a court, because of mental impairment, to be unable to receive and evaluate information
83 effectively or to respond to people, events, and environments to an extent that the individual lacks
84 the capacity to: (1) Meet the essential requirements for his or her health, care, safety, habilitation,
85 or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or
86 financial affairs to provide for his or her support or for the support of legal dependents without the
87 assistance or protection of a conservator.

88 "Qualified physician" means a physician licensed to practice medicine who has personally
89 examined the person.

90 "Qualified psychologist" means a psychologist licensed to practice psychology who has
91 personally examined the person.

92 "Surrogate decision-maker" or "surrogate" means an individual 18 years of age or older
93 who is reasonably available, to make health care decisions on behalf of an incapacitated person,
94 possesses the capacity to make health care decisions, and is identified or selected by the
95 attending physician or advanced nurse practitioner in accordance with the provisions of this article
96 as the person who is to make those decisions in accordance with the provisions of this article.

97 "Terminal condition" means an incurable or irreversible condition as diagnosed by the
98 attending physician or a qualified physician for which the administration of life-prolonging
99 intervention will serve only to prolong the dying process.

§16-30-25. Portable orders for scope of treatment form.

1 (a) The secretary of the Department of Health and Human Resources shall implement the
2 statewide distribution of standardized portable orders for scope of treatment (POST) forms.

3 (b) Portable orders for scope of treatment forms shall be standardized forms used to reflect
 4 orders by a qualified physician, an advanced practice registered nurse, or a physician ~~assistant~~
 5 associate for medical treatment of a person in accordance with that person’s wishes or, if that
 6 person’s wishes are not reasonably known and cannot with reasonable diligence be ascertained,
 7 in accordance with that person’s best interest. The form shall be bright pink in color to facilitate
 8 recognition by emergency medical services personnel and other health care providers and shall
 9 be designed to provide for information regarding the care of the patient, including, but not limited
 10 to, the following:

11 (1) The orders of a qualified physician, an advanced practice registered nurse, or a
 12 physician ~~assistant~~ associate regarding cardiopulmonary resuscitation, level of medical
 13 intervention in the event of a medical emergency, use of antibiotics, and use of medically
 14 administered fluids and nutrition and the basis for the orders;

15 (2) The signature of the qualified physician, an advanced practice registered nurse, or a
 16 physician ~~assistant~~ associate;

17 (3) Whether the person has completed an advance directive or had a guardian, medical
 18 power of attorney representative, or surrogate appointed;

19 (4) The signature of the person or his or her guardian, medical power of attorney
 20 representative, or surrogate acknowledging agreement with the orders of the qualified physician,
 21 an advanced practice registered nurse, or a physician ~~assistant~~ associate; and

22 (5) The date, location, and outcome of any review of the portable orders for scope of
 23 treatment form.

24 (c) The portable orders for scope of treatment form shall be kept as the first page in a
 25 person’s medical record in a health care facility unless otherwise specified in the health care
 26 facility’s policies and procedures and shall be transferred with the person from one health care
 27 facility to another.

ARTICLE 39. PATIENT SAFETY ACT.

§16-39-3. Definitions.

1 For purposes of this article, the following words and phrases have the following meanings:

2 "Appropriate authority" means a federal, state, county, or municipal government body,
3 agency or organization having jurisdiction over criminal law enforcement, regulatory violations,
4 professional conduct or ethics, or waste or any member, officer, agent, representative, or
5 supervisory employee thereof;

6 "Clergy" means an ordained clergy, such as a rabbi, priest, Islamic cleric, associate pastor,
7 licensed minister, or lay minister serving under the direction of the congregation such as the
8 Roman Catholic Eucharistic ministers;

9 "Commissioner" means the commissioner of the division of health;

10 "Direct patient care" means health care that provides for the physical, diagnostic,
11 emotional, or rehabilitational needs of a patient or health care that involves examination,
12 treatment, or preparation for diagnostic tests or procedures.

13 "Discrimination or retaliation" includes any threat, intimidation, discharge, or any adverse
14 change in a health care worker's position, location, compensation, benefits, privileges, or terms or
15 conditions of employment that occurs as a result of a health care worker engaging in any action
16 protected by this article.

17 "Good faith report" means a report of conduct defined in this article as wrongdoing or waste
18 that is made without malice or consideration of personal benefit and which the person making the
19 report has reasonable cause to believe is true.

20 "Health care entity" includes a health care facility, such as a hospital, clinic, nursing facility,
21 or other provider of health care services.

22 "Health care facility" means:

23 (1) A hospital licensed pursuant to §16-5B-1 *et seq.* of this code;

24 (2) A nursing home licensed pursuant to §16-5C-1 *et seq.* of this code;

25 (3) An assisted living residence licensed pursuant to §16-5D-1 *et seq.* of this code; and

26 (4) Hospice licensed pursuant to §16-5I-1 *et seq.* of this code.

27 "Health care worker" means a person who provides direct patient care to patients of a
28 health care entity and who is an employee of the health care entity, a subcontractor, or
29 independent contractor for the health care entity, or an employee of the subcontractor or
30 independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory
31 technician, physician, intern, resident, physician ~~assistant~~ associate, physical therapist, or any
32 other person who provides direct patient care.

33 "Patient" means a person living or receiving services as an inpatient at a healthcare facility.

34 "Public Health State of Emergency" means a federal or state declaration of a state of
35 emergency arising from or relating to a public health crisis.

36 "Visitor" means any visitor from the patient's family, or hospice visiting a patient in a
37 healthcare facility.

38 "Waste" means the conduct, act, or omission by a health care entity that results in
39 substantial abuse, misuse, destruction, or loss of funds, resources, or property belonging to a
40 patient, a health care entity, or any federal or state program.

41 "Wrongdoing" means a violation of any law, rule, regulation, or generally recognized
42 professional or clinical standard that relates to care, services, or conditions and which potentially
43 endangers one or more patients or workers or the public.

ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.

§16-46-2. Definitions.

1 As used in this article:

2 (1) "Initial responder" means emergency medical service personnel, as defined in
3 subdivision (g), section three, article four-c of this chapter, including, but not limited to, a member
4 of the West Virginia State Police, a sheriff, a deputy sheriff, a municipal police officer, a volunteer
5 or paid firefighter and any other person acting under color of law who responds to emergencies.

6 (2) "Licensed health care provider" means a person, partnership, corporation, professional

7 limited liability company, health care facility or institution licensed by or certified in this state to
 8 provide health care or professional health care services. This includes, but is not limited to,
 9 medical physicians, allopathic and osteopathic physicians, pharmacists, physician ~~assistants~~
 10 associates or osteopathic physician ~~assistants~~ associates who hold a certificate to prescribe
 11 drugs, advanced nurse practitioners who hold a certificate to prescribe drugs, hospitals,
 12 emergency service agencies and others as allowed by law to prescribed drugs.

13 (3) "Opiates" or "opioid drugs" means drugs that are members of the natural and synthetic
 14 opium family, including, but not limited to, heroin, morphine, codeine, methadone, oxycodone,
 15 hydrocodone, fentanyl and hydromorphone.

16 (4) "Opioid antagonist" means a federal Food and Drug Administration-approved drug for
 17 the treatment of an opiate-related overdose, such as naloxone hydrochloride or other substance,
 18 that, when administered, negates or neutralizes, in whole or in part, the pharmacological effects of an
 19 opioid in the body.

20 (5) "Opioid overdose prevention and treatment training program" or "program" means any
 21 program operated or approved by the Office of Emergency Medical Services as set forth in rules
 22 promulgated pursuant to this article.

23 (6) "Overdose" means an acute condition, including, but not limited to, life-threatening
 24 physical illness, coma, mania, hysteria or death, which is the result of the consumption or use of
 25 opioid drugs.

26 (7) "Standing order" means a written document containing rules, policies, procedures,
 27 regulations and orders for the conduct of patient care, including the condition being treated, the
 28 action to be taken and the dosage and route of administration for the drug prescribed.

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

1 As used in this section:

2 "Acute pain" means a time limited pain caused by a specific disease or injury.

3 "Chronic pain" means a noncancer, nonend of life pain lasting more than three months or
4 longer than the duration of normal tissue healing.

5 "Health care practitioner" or "practitioner" means:

6 (1) A physician authorized pursuant to the provisions of §30-3-1 et seq. and §30-14-1 et
7 seq. of this code;

8 (2) A podiatrist licensed pursuant to the provisions of §30-3-1 et seq. of this code;

9 (3) A physician ~~assistant~~ associate with prescriptive authority as set forth in §30-3E-3 of
10 this code;

11 (4) An advanced practice registered nurse with prescriptive authority as set forth in §30-7-
12 15a of this code;

13 (5) A dentist licensed pursuant to the provisions of §30-4-1 et seq. of this code;

14 (6) An optometrist licensed pursuant to the provisions of §30-8-1 et seq. of this code;

15 (7) A physical therapist licensed pursuant to the provisions of §30-20-1 et seq. of this code;

16 (8) An occupational therapist licensed pursuant to the provisions of §30-28-1 et seq. of this
17 code;

18 (9) An osteopathic physician licensed pursuant to the provisions of §30-14-1 et seq. of this
19 code; and

20 (10) A chiropractor licensed pursuant to the provisions of §30-16-1 et seq. of this code.

21 "Insurance provider" means an entity that is regulated under the provisions of §33-15-1 et
22 seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq. and §33-25A-1 et seq. of this code.

23 "Office" means the Office of Drug Control Policy.

24 "Pain clinic" means the same as that term is defined in §16-5H-2 of this code.

25 "Pain specialist" means a practitioner who is board certified in pain management or a
26 related field.

27 "Prescribe" means the advisement of a physician or other licensed practitioner to a patient
28 for a course of treatment. It can include but is not limited to medication, services, supplies,

29 equipment, procedures, diagnostic tests, or screening as permitted by the physician or other
30 licensed practitioner's scope of practice.

31 "Referral" means the recommendation by a person to another person for the purpose of
32 initiating care by a health care practitioner.

33 "Schedule II opioid drug" means an opioid drug listed in §60A-2-206 of this code.

34 "Surgical procedure" means a medical procedure involving an incision with instruments
35 performed to repair damage or arrest disease in a living body.

ARTICLE 57. SUDDEN CARDIAC ARREST PREVENTION ACT.

§16-57-3. Applicability, educational materials, removal from play, and training.

1 (a) The Department of Education, working in conjunction with the State Health Officer of
2 the Department of Health and Human Resources, shall develop educational materials and
3 guidelines, including a warning sign information sheet, regarding sudden cardiac arrest, including,
4 but not limited to, symptoms and warning signs for students of all ages and risks associated with
5 continuing to play or practice after experiencing the following symptoms: Fainting or seizures
6 during exercise, unexplained shortness of breath, chest pains, dizziness, racing heart, or extreme
7 fatigue. Training materials shall be developed for the use of parents, students, coaches, and
8 administrators.

9 (b) The educational materials and other relevant materials shall be posted on the website
10 of the Department of Education, Department of Health and Human Resources, and public schools
11 to inform and educate parents, students, and coaches participating, or desiring to participate in, an
12 athletic activity about the nature and warning signs of sudden cardiac arrest.

13 (c) Prior to the start of each athletic season, a school subject to this section shall hold an
14 informational meeting for students, parents, guardians, or other persons having care or charge of
15 a student regarding the warning signs of sudden cardiac arrest for children of all ages.

16 (d) No student may participate in an athletic activity until the student has submitted to a
17 designated school official, a form signed by the student and the parent, guardian, or other person

18 having care or charge of the student stating that the student and the parent, guardian, or other
19 person having care or charge of the student have received and reviewed a copy of the information
20 developed by the departments of health and education and posted on their respective webpages.
21 A completed form shall be submitted each school year in which the student participates in an
22 athletic activity.

23 (e) No individual may coach an athletic activity unless the individual has completed, on an
24 annual basis, the sudden cardiac arrest training course approved by the Department of Education
25 and Department of Health and Human Resources.

26 (f) A student shall not be allowed to participate in an athletic activity if either of the following
27 is the case:

28 (1) The student is known to have exhibited syncope or fainting at any time prior to or
29 following an athletic activity and has not been evaluated and cleared for return after exhibiting
30 syncope or fainting; or

31 (2) The student experiences syncope or fainting while participating in, or immediately
32 following, an athletic activity.

33 (g) If a student is not allowed to participate in or is removed from participation in an athletic
34 activity under subsection (f) of this section, the student shall not be allowed to return to
35 participation until the student is evaluated and cleared for return in writing by any of the following:

36 (1) A physician authorized under §30-3-1 et seq. and §30-14-1 et seq. of this code;

37 (2) A certified nurse practitioner, clinical nurse specialist, or certified nurse midwife; or

38 (3) A physician ~~assistant~~ associate licensed under §30-3E-1 et seq. and §30-14A-1 et seq.
39 of this code.

40 (h) The licensed health care professional may consult with any other licensed or certified
41 health care professionals in order to determine whether a student is ready to participate in the
42 athletic activity.

43 (i) The governing body of a school shall establish penalties for a coach found in violation of

44 the requirements of subsection (f) of this section.

45 (j) A school district, member of a school district, board of education, school district
 46 employee or volunteer, including a coach, is not liable for damages in a civil action for injury, death,
 47 or loss to person or property allegedly arising from providing services or performing duties under
 48 this section, unless the act or omission constitutes willful or wanton misconduct. This section does
 49 not eliminate, limit, or reduce any other immunity or defense that a school district, member of a
 50 board of education, or school district employee or volunteer, including a coach, may be entitled to
 51 under the law of this state.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22b. Providing for self-administration of asthma medication; definitions; conditions; indemnity from liability; rules.

1 (a) For the purposes of this section, the following words have the meanings specified
 2 unless the context clearly indicates a different meaning:

3 (1) "Medication" means asthma medicine, prescribed by:

4 (A) A physician licensed to practice medicine in all its branches; or

5 (B) A physician ~~assistant~~ associate who has been delegated the authority to prescribe
 6 asthma medications by a supervising physician; or

7 (C) An advanced practice registered nurse who has a written collaborative agreement with
 8 a collaborating physician. Such agreement shall delegate the authority to prescribe the
 9 medications for a student that pertain to the student's asthma and that have an individual
 10 prescription label.

11 (2) "Self-administration" or "self-administer" means a student's discretionary use of
 12 prescribed asthma medication.

13 (b) A student enrolled in a public, private, parochial or denominational school located

14 within this state may possess and self-administer asthma medication subject to the following
15 conditions:

16 (1) The parents or guardians of the student have provided to the school:

17 (A) A written authorization for the self-administration of asthma medication; and

18 (B) A written statement from the physician or advanced practice registered nurse which
19 contains the name, purpose, appropriate usage and dosage of the student's medication and the
20 time or times at which, or the special circumstances under which, the medication is to be
21 administered;

22 (2) The student has demonstrated the ability and understanding to self-administer asthma
23 medication by:

24 (A) Passing an assessment by the school nurse evaluating the student's technique of self-
25 administration and level of understanding of the appropriate use of the asthma medication; or

26 (B) In the case of nonpublic schools that do not have a school nurse, providing to the
27 school from the student's physician or advanced practice registered nurse written verification that
28 the student has passed such an assessment; and

29 (3) The parents or guardians of the student have acknowledged in writing that they have
30 read and understand a notice provided by the county board or nonpublic school that:

31 (A) The school, county school board or nonpublic school and its employees and agents are
32 exempt from any liability, except for willful and wanton conduct, as a result of any injury arising
33 from the self-administration of asthma medication by the student; and

34 (B) The parents or guardians indemnify and hold harmless the school, the county board of
35 education or nonpublic school and its employees or guardians and agents against any claims
36 arising out of the self-administration of the medication by the student.

37 (c) The information provided to the school pursuant to subsection (b) of this section shall
38 be kept on file in the office of the school nurse or, in the absence of a school nurse, in the office of
39 the school administrator.

40 (d) Permission for a student to self-administer asthma medication is effective for the school
41 year for which it is granted and shall be renewed each subsequent school year if the requirements
42 of this section are met.

43 (e) Permission to self-administer medication may be revoked if the administrative head of
44 the school finds that the student's technique of self-administration and understanding of the use of
45 the asthma medication is not appropriate or is willfully disregarded.

46 (f) A student with asthma who has met the requirements of this section may possess and
47 use asthma medication:

48 (1) In school;

49 (2) At a school-sponsored activity;

50 (3) Under the supervision of school personnel; or

51 (4) Before or after normal school activities, such as before school or after school care on
52 school operated property.

53 (g) The state board shall promulgate rules necessary to effectuate the provisions of this
54 section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-3. Definitions.

1 For purposes of this article, and in addition to the definitions set forth in section two, article
2 one of this chapter, the terms used in this article have the following definitions ascribed to them:

3 (a) "Advisory panel" or "panel" means the West Virginia rural health advisory panel created
4 under section six of this article.

5 (b) "Allied health care" means health care other than that provided by physicians, nurses,
6 dentists and mid-level providers and includes, but is not limited to, care provided by clinical
7 laboratory personnel, physical therapists, occupational therapists, respiratory therapists, medical

8 records personnel, dietetic personnel, radiologic personnel, speech-language-hearing personnel
9 and dental hygienists.

10 (c) "Mid-level provider" includes, but is not limited to, advanced nurse practitioners, nurse-
11 midwives and physician assistants associates.

12 (d) "Office of community and rural health services" means that agency, staff or office within
13 the Department of Health and Human Resources which has as its primary focus the delivery of
14 rural health care.

15 (e) "Primary care" means basic or general health care which emphasizes the point when
16 the patient first seeks assistance from the medical care system and the care of the simpler and
17 more common illnesses. This type of care is generally rendered by family practice physicians,
18 general practice physicians, general internists, obstetricians, pediatricians, psychiatrists and mid-
19 level providers.

20 (f) "Primary health care education sites" or "sites", whether the term is used in the plural or
21 singular, means those rural health care facilities established for the provision of educational and
22 clinical experiences pursuant to section seven of this article.

23 (g) "Rural health care facilities" or "facilities", whether the term is used in the plural or
24 singular, means nonprofit, free-standing primary care clinics in medically underserved or health
25 professional shortage areas and nonprofit rural hospitals with 100 or less licensed acute care beds
26 located in a nonstandard metropolitan statistical area.

27 (h) "Schools of medicine" means the West Virginia University school of medicine, which is
28 the school of health sciences; the Marshall school of medicine, which is the Marshall medical
29 school; and the West Virginia school of osteopathic medicine.

30 (i) "Vice chancellor" means the vice chancellor for health sciences provided for under
31 section six, article two of this chapter.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF GOVERNING BOARDS.**§18C-3-3. Health Sciences Service Program; establishment; administration; eligibility.**

1 (a) There is continued a special revolving fund account under the Higher Education Policy
2 Commission in the State Treasury formerly known as the Health Sciences Scholarship Fund. The
3 fund shall be used to accomplish the purposes of this section. The fund consists of any of the
4 following:

5 (1) All unexpended health sciences scholarship funds on deposit in the State Treasury on
6 the effective date of this section;

7 (2) Appropriations as may be provided by the Legislature;

8 (3) Repayments, including interest as set by the Vice Chancellor for Health Sciences,
9 collected from program award recipients who fail to practice or teach in West Virginia under the
10 terms of an award agreement or the Health Sciences Scholarship Program previously established
11 by this section; and

12 (4) Amounts that may become available from other sources.

13 Balances remaining in the fund at the end of the fiscal year do not expire or revert to the
14 general revenue. All costs associated with the administration of this section shall be paid from the
15 Health Sciences Service Program Fund under the direction of the Vice Chancellor for Health
16 Sciences.

17 (b) Award preference is given to West Virginia residents. An individual is eligible for
18 consideration for a Health Sciences Service Program award if the individual:

19 (1) Either:

20 (A) Is a fourth-year medical student at the Marshall University School of Medicine, West
21 Virginia School of Osteopathic Medicine, or West Virginia University School of Medicine who has
22 been accepted in a primary care or emergency medicine internship/residency program in West
23 Virginia; or

24 (B) Is enrolled in an approved education program at a West Virginia institution leading to a

25 degree or certification in the field of nurse practitioner, nurse educator, nurse midwife, physician
26 ~~assistant~~ associate, dentist, pharmacist, physical therapist, doctoral clinical psychologist, licensed
27 independent clinical social worker, or other disciplines identified as shortage fields by the Vice
28 Chancellor for Health Sciences; and

29 (2) Signs an agreement to practice for at least two years in an underserved area of West
30 Virginia or, if pursuing a master's degree in nursing, signs an agreement to teach at least two years
31 for a school of nursing located in West Virginia, as may be determined by the Vice Chancellor for
32 Health Sciences, after receiving the master's degree.

33 (c) Program awards shall be in an amount set by the Higher Education Policy Commission
34 of at least \$20,000 for medical and dental students and at least \$10,000 for all others and may be
35 awarded by the Vice Chancellor for Health Sciences, with the advice of an advisory panel, from the
36 pool of all applicants with a commitment to practice in an underserved area of West Virginia. This
37 section does not grant or guarantee any applicant any right to a program award.

38 (d) A program award recipient who fails to practice in an underserved area of West Virginia
39 within six months of the completion of his or her training, or who fails to complete his or her training
40 or required teaching, is in breach of contract and is liable for repayment of the program award and
41 any accrued interest. The granting or renewal of a license to practice in West Virginia or to
42 reciprocal licensure in another state based upon licensure in West Virginia is contingent upon
43 beginning payment and continuing payment until complete repayment of the award and any
44 accrued interest. A license, renewal, or reciprocity may not be granted to any person whose
45 repayment is in arrears. The appropriate regulatory board shall inform all other states where a
46 recipient has reciprocated based upon West Virginia licensure of any refusal to renew licensure in
47 West Virginia as a result of failure to repay the award. This provision shall be explained in bold type
48 in the award contract. Repayment terms, not inconsistent with this section, shall be established by
49 the Vice Chancellor for Health Sciences pursuant to the rule required by this section.

50 (e) (1) There is created a student loan repayment program to be administered by the

51 Higher Education Policy Commission. The loan repayment program shall help repay the student
52 loans for mental health providers who provide therapy and counseling services and who reside in
53 West Virginia and work in an underserved area of West Virginia for up to three years beginning
54 January 1, 2020. Individuals participating in the loan repayment program may be eligible to receive
55 up to \$30,000 to be dispersed as follows:

56 (A) A participant may receive a loan repayment program award of up to \$10,000 each year
57 in exchange for the participant completing one year of practice in an underserved area.

58 (B) A participant may not receive a program award for more than three years of practice.

59 (C) A participant must direct each award received toward the repayment of his or her
60 educational loans.

61 (2) There is created a special revenue fund account under the Higher Education Policy
62 Commission in the State Treasury known as the Mental Health Provider Student Loan Repayment
63 Fund. The fund shall be used to accomplish the purposes of this subsection. The fund shall consist
64 of appropriations as may be provided by the Legislature. Any moneys remaining in the fund at the
65 close of a fiscal year shall be carried forward for use in the next fiscal year.

66 (f) *Rule.* — The Higher Education Policy Commission shall promulgate a rule pursuant to
67 §29A-3A-1 *et seq.* of this code to implement and administer this section.

68 (g) As used in this section:

69 (1) "Training" means:

70 (A) The entire degree program or certification program for nurse midwives, nurse
71 practitioners, nurse educators, physician ~~assistants~~ associates, dentists, pharmacists, physical
72 therapists, doctoral clinical psychologists, licensed independent clinical social workers, and other
73 disciplines identified as shortage fields by the Vice Chancellor for Health Sciences; or

74 (B) Completion of a degree program and an approved residency/internship program for
75 students pursuing a degree in medicine or osteopathy, or as otherwise may be designated for such
76 students in the rule required by this section.

77 (2) "Underserved area" means any primary care health professional shortage area located
78 in the state as determined by the Bureau for Public Health or any additional health professional
79 shortage area, including an emergency medicine professional determined by the Vice Chancellor
80 for Health Sciences.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46e. Class Q special hunting permit for disabled persons.

1 (a) A Class Q permit is a special statewide hunting permit entitling the permittee to hunt all
2 legal species of game during the designated hunting seasons from a motor vehicle in accordance
3 with the provisions of this section.

4 (b) The director shall furnish an application and a Class Q permit will be issued to
5 applicants who meet one of the following conditions of permanent disability:

6 (1) Permanent or irreversible physical disability that prevents ability to ambulate without
7 use of a wheelchair, walker, crutches, one leg brace or external prosthesis above the knee, or two
8 leg braces or external prostheses below the knees for mobility.

9 (2) Multiple conditions that result in a minimum of 90 percent loss of use of a lower
10 extremity.

11 (3) Lung disease to the extent that forced expiratory volume for one second when
12 measured by spirometry is less than one liter or the arterial oxygen tension less than 60
13 millimeters of mercury on room air at rest.

14 (4) Cardiovascular disease to the extent that functional limitations are classified in severity
15 as class 3 or 4, according to standards set by the American Heart Association and where ordinary
16 physical activity causes palpitation, dyspnea or anginal pain.

17 (c) A licensed physician, physician ~~assistant~~ associate, advanced practice registered
18 nurse or chiropractic physician must certify the applicant's permanent disability by completing the

19 permit application. The Class Q permit application shall be submitted to the division, which will
20 issue a wallet sized card to the permittee.

21 (d) A person with a Class Q permit may not hunt or trap under the provisions of this section
22 unless he or she is in possession of the Class Q permit card, a valid hunting license issued
23 pursuant to §20-2-1 et seq. of this code or is a person excepted from licensing requirements
24 pursuant to §20-2-27 and §20-2-28 of this code, and all documents or other lawful authorizations
25 as prescribed in §20-2-37 of this code.

26 (e) A Class Q permit entitles the holder to hunt from a motor vehicle and, notwithstanding
27 the provisions of §20-2-5 of this code, to possess a loaded firearm in a motor vehicle, but only
28 under the following circumstances:

29 (1) The motor vehicle is stationary;

30 (2) The engine of the motor vehicle is not operating;

31 (3) The permittee and one individual, who is at least 16 years of age, to assist the permittee
32 are the only occupants of the vehicle;

33 (4) The individual assisting the permittee may not hunt with a firearm, bow, or cross-bow
34 while assisting the permittee;

35 (5) The vehicle is not parked on the right-of-way of any public road or highway; and

36 (6) The permittee observes all other pertinent laws and regulations.

37 (f) The director may propose rules for legislative approval in accordance with the
38 provisions of §29A-3-1 et seq. of this code setting forth the qualifications of applicants and the
39 permitting process.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

**§27-5-2. 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 the
3 individual to be examined has a substance use disorder as defined by the most recent edition of
4 the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders,
5 inclusive of substance use withdrawal, or is mentally ill and because of his or her substance use
6 disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to
7 others if allowed to remain at liberty while awaiting an examination and certification by a physician,
8 psychologist, licensed professional counselor, licensed independent social worker, an advanced
9 nurse practitioner, or physician ~~assistant~~ associate as provided in subsection (e) of this section:
10 *Provided*, That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone
11 may not be a basis for involuntary commitment to a state hospital.

12 (b) Notwithstanding any language in this subsection to the contrary, if the individual to be
13 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional
14 facility, then only the chief administrative officer of the facility holding the individual may file the
15 application, and the application must include the additional statement that the correctional facility
16 itself cannot reasonably provide treatment and other services necessary to treat the individual's
17 mental illness or substance use.

18 (c) Application for involuntary custody for examination may be made to the circuit court,
19 magistrate court, or a mental hygiene commissioner of the county in which the individual resides,
20 or of the county in which he or she may be found. A magistrate before whom an application or
21 matter is pending may, upon the availability of a mental hygiene commissioner or circuit court
22 judge for immediate presentation of an application or pending matter, transfer the pending matter
23 or application to the mental hygiene commissioner or circuit court judge for further proceedings
24 unless otherwise ordered by the chief judge of the judicial circuit.

25 (d) The person making the application shall give information and state facts in the
26 application required by the form provided for this purpose by the Supreme Court of Appeals.

27 (e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for
28 the individual named in the application to be detained and taken into custody as provided in §27-5-
29 1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in
30 §27-5-2 of this code. An examination of the individual to determine whether the individual meets
31 involuntary hospitalization criteria shall be conducted in person unless an in person examination
32 would create a substantial delay in the resolution of the matter in which case the examination may
33 be by video conference, and shall be performed by a physician, psychologist, a licensed
34 professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed
35 independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an
36 advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et*
37 *seq.* of this code, a physician ~~assistant~~ associate practicing in compliance with §30-3-1 *et seq.* of
38 this code, or a physician ~~assistant~~ associate practicing in compliance with §30-3E-1 *et seq.* of this
39 code: *Provided*, That a licensed professional counselor, a licensed independent clinical social
40 worker, a physician ~~assistant~~ associate, or an advanced nurse practitioner with psychiatric
41 certification may only perform the examination if he or she has previously been authorized by an
42 order of the circuit court to do so, the order having found that the licensed professional counselor,
43 the licensed independent clinical social worker, physician ~~assistant~~ associate, or advanced nurse
44 practitioner with psychiatric certification has particularized expertise in the areas of mental health
45 and mental hygiene or substance use disorder sufficient to make the determinations required by
46 the provisions of this section. The examination shall be provided or arranged by a community
47 mental health center designated by the Secretary of the Department of Health and Human
48 Resources to serve the county in which the action takes place. The order is to specify that the
49 evaluation be held within a reasonable period of time not to exceed two hours and shall provide for
50 the appointment of counsel for the individual: *Provided*, however, That the time requirements set
51 forth in this subsection only apply to persons who are not in need of medical care for a physical
52 condition or disease for which the need for treatment precludes the ability to comply with the time

53 requirements. During periods of holding and detention authorized by this subsection, upon
54 consent of the individual or if there is a medical or psychiatric emergency, the individual may
55 receive treatment. The medical provider shall exercise due diligence in determining the
56 individual's existing medical needs and provide treatment the individual requires, including
57 previously prescribed medications. As used in this section, "psychiatric emergency" means an
58 incident during which an individual loses control and behaves in a manner that poses substantial
59 likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed
60 professional counselor, licensed independent clinical social worker, physician ~~assistant~~ associate,
61 or advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours,
62 performed the examination required by this subsection the community mental health center may
63 waive the duty to perform or arrange another examination upon approving the previously
64 performed examination. Notwithstanding this subsection, §27-5-4(r) of this code applies regarding
65 payment by the county commission for examinations at hearings. If the examination reveals that
66 the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill
67 or has a substance use disorder but not likely to cause harm to himself, herself, or others, the
68 individual shall be immediately released without the need for a probable cause hearing and the
69 examiner is not civilly liable for the rendering of the opinion absent a finding of professional
70 negligence. The examiner shall immediately, but no later than 60 minutes after completion of the
71 examination, provide the mental hygiene commissioner, circuit court, or magistrate before whom
72 the matter is pending, and the state hospital to which the individual may be involuntarily
73 hospitalized, the results of the examination on the form provided for this purpose by the Supreme
74 Court of Appeals for entry of an order reflecting the lack of probable cause.

75 (f) A probable cause hearing shall be held promptly before a magistrate, the mental
76 hygiene commissioner, or circuit judge of the county of which the individual is a resident or where
77 he or she was found. If requested by the individual or his or her counsel, the hearing may be
78 postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing

79 unless the individual or his or her attorney object for good cause or unless the magistrate, mental
80 hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is
81 requested to develop regional mental hygiene collaboratives where mental hygiene
82 commissioners can share on-call responsibilities, thereby reducing the burden on individual
83 circuits and commissioners.

84 The individual shall be present at the hearing and has the right to present evidence,
85 confront all witnesses and other evidence against him or her, and examine testimony offered,
86 including testimony by representatives of the community mental health center serving the area.
87 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The
88 individual has the right to remain silent and to be proceeded against in accordance with the Rules
89 of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the
90 conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge
91 shall find and enter an order stating whether or not it is likely that deterioration will occur without
92 clinically necessary treatment, or there is probable cause to believe that the individual, as a result
93 of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or
94 to others. Any such order entered shall be provided to the state hospital to which the individual
95 may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

96 (g) Probable cause hearings may occur in the county where a person is hospitalized. The
97 judicial hearing officer may: use videoconferencing and telephonic technology; permit persons
98 hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is
99 accomplished; and specify other alternative or modified procedures that are consistent with the
100 purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The
101 alternative or modified procedures shall fully and effectively guarantee to the person who is the
102 subject of the involuntary commitment proceeding and other interested parties due process of the
103 law and access to the least restrictive available treatment needed to prevent serious harm to self
104 or others.

105 (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable
106 cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing
107 held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of
108 mental illness or substance use disorder is likely to cause serious harm to himself, herself, or
109 others and because of mental illness or a substance use disorder requires treatment, the
110 magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the
111 question of whether the individual's circumstances make him or her amenable to outpatient
112 treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.
113 At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court
114 judge shall find and enter an order stating whether or not it is likely that deterioration will occur
115 without clinically necessary treatment, or there is probable cause to believe that the individual, as
116 a result of mental illness or substance use disorder, is likely to cause serious harm to himself or
117 herself or others. The agreement is to be in writing and approved by the individual, his or her
118 counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the
119 magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate
120 outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be
121 released to outpatient treatment upon the terms and conditions of the voluntary treatment
122 agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary
123 treatment agreement to comply with the terms of the voluntary treatment agreement constitutes
124 evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental
125 hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or
126 refused to comply with the terms and conditions of the voluntary treatment agreement and whether
127 the individual as a result of mental illness or substance use disorder remains likely to cause
128 serious harm to himself, herself, or others, the entry of an order requiring admission under
129 involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the
130 provisions of this article regarding release pursuant to a voluntary treatment agreement or

131 convalescent status may be construed as creating a right to receive outpatient mental health
132 services or treatment, or as obligating any person or agency to provide outpatient services or
133 treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a
134 mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary
135 treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may
136 not be for a period of more than six months if the individual has not been found to be involuntarily
137 committed during the previous two years and for a period of no more than two years if the
138 individual has been involuntarily committed during the preceding two years. If in any proceeding
139 held pursuant to this article the individual objects to the issuance or conditions and terms of an
140 order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental
141 hygiene commissioner may not enter an order directing treatment pursuant to a voluntary
142 treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment
143 agreement is ordered, the individual subject to the order may, upon request during the period the
144 order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the
145 individual may seek to have the order canceled or modified. Nothing in this section affects the
146 appellate and habeas corpus rights of any individual subject to any commitment order.

147 The commitment of any individual as provided in this article shall be in the least restrictive
148 setting and in an outpatient community-based treatment program to the extent resources and
149 programs are available, unless the clear and convincing evidence of the certifying professional
150 under subsection (e) of this section, who is acting in a manner consistent with the standard of care
151 establishes that the commitment or treatment of that individual requires an inpatient hospital
152 placement. Outpatient treatment will be based upon a plan jointly prepared by the department and
153 the comprehensive community mental health center or licensed behavioral health provider.

154 (i) If the certifying professional determines that an individual requires involuntary
155 hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to
156 the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will

157 cause significant medical complications, the person certifying the individual shall recommend that
158 the individual be closely monitored for possible medical complications. If the magistrate, mental
159 hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she
160 shall include a recommendation that the individual be closely monitored in the order of
161 commitment.

162 (j) The Supreme Court of Appeals and the Secretary of the Department of Health and
163 Human Resources shall specifically develop and propose a statewide system for evaluation and
164 adjudication of mental hygiene petitions which shall include payment schedules and
165 recommendations regarding funding sources. Additionally, the Secretary of the Department of
166 Health and Human Resources shall also immediately seek reciprocal agreements with officials in
167 contiguous states to develop interstate/intergovernmental agreements to provide efficient and
168 efficacious services to out-of-state residents found in West Virginia and who are in need of mental
169 hygiene services.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

1 (a) *Admission to a mental health facility for examination.* — An individual shall be admitted
2 to a mental health facility for examination and treatment upon entry of an order finding probable
3 cause as provided in §27-5-2 of this code. Upon certification by a physician, psychologist,
4 licensed professional counselor, licensed independent clinical social worker practicing in
5 compliance with the provisions of §30-30-1 *et seq.* of this code, an advanced nurse practitioner
6 with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, or a
7 physician's ~~assistant~~ associate practicing in compliance with §30-3E-1 *et seq.* of this code with
8 advanced duties in psychiatric medicine that he or she has examined the individual and is of the
9 opinion that the individual is mentally ill or has a substance use disorder and, because of the
10 mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or to
11 others if not immediately restrained and treated: *Provided*, That the opinions offered by an
12 independent clinical social worker, an advanced nurse practitioner with psychiatric certification, or

13 a physician ~~assistant~~ associate with advanced duties in psychiatric medicine shall be within his or
14 her particular areas of expertise, as recognized by the order of the authorizing court.

15 (b) *Three-day time limitation on examination.* — If the examination does not take place
16 within three days from the date the individual is taken into custody, the individual shall be released.
17 If the examination reveals that the individual is not mentally ill or has a substance use disorder, the
18 individual shall be released.

19 (c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of
20 this code is valid for three days. Any individual with respect to whom the certification has been
21 issued may not be admitted on the basis of the certification at any time after the expiration of three
22 days from the date of the examination.

23 (d) *Findings and conclusions required for certification.* — A certification under this section
24 shall include findings and conclusions of the mental examination, the date, time, and place of the
25 examination, and the facts upon which the conclusion that involuntary commitment is necessary is
26 based, including facts that less restrictive interventions and placements were considered but are
27 not appropriate and available and that the risks and benefits were explained as required by §27-5-
28 1(i) of this code.

29 (e) *Notice requirements.* — When an individual is admitted to a mental health facility or a
30 state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall
31 immediately give notice of the individual's admission to the individual's spouse, if any, and one of
32 the individual's parents or guardians or if there is no spouse and are no parents or guardians, to
33 one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be
34 given to the community mental health facility, if any, having jurisdiction in the county of the
35 individual's residence. The notices other than to the community mental health facility shall be in
36 writing and shall be transmitted to the person or persons at his, her, or their last known address by
37 certified mail, return receipt requested.

38 (f) *Three-day time limitation for examination and certification at mental health facility or*

39 *state hospital*. — After the individual’s admission to a mental health facility or state hospital, he or
40 she may not be detained more than three days, excluding Sundays and holidays, unless, within
41 the three-day period, the individual is examined by a staff physician and the physician certifies that
42 in his or her opinion the patient is not suffering from a physical ailment manifesting behaviors
43 which mimic mental illness but is mentally ill or has a substance use disorder and is likely to injure
44 himself, herself, or others and requires continued commitment and treatment. If the staff physician
45 determines that the individual does not meet the criteria for continued commitment, that the
46 individual can be treated in an available outpatient community-based treatment program and
47 poses no present danger to himself, herself or others, or that the individual has an underlying
48 medical issue or issues that resulted in a determination that the individual should not have been
49 committed, the staff physician shall release and discharge the individual as appropriate as soon as
50 practicable.

51 (g) *Twenty-day time limitation for institution of final commitment proceedings*. — If, in the
52 opinion of the examining physician, the patient is mentally ill or has a substance use disorder and
53 because of the mental illness or substance use disorder is likely to injure himself, herself, or others
54 if allowed to be at liberty, the chief medical officer shall, within 20 calendar days from the date of
55 admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the
56 proceedings are not instituted within the 20-day period absent good cause, the individual shall be
57 immediately released. After the request for hearing is filed, the hearing may not be canceled on the
58 basis that the individual has become a voluntary patient unless the mental hygiene commissioner
59 concurs in the motion for cancellation of the hearing.

60 (h) *Thirty-five day time limitation for conclusion of all proceedings*. — If all proceedings as
61 provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within 35 days from
62 the date of filing the Application for Involuntary Custody for Mental Health Examination, the
63 individual shall be immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.* — Except as provided in §27-5-2 and §27-5-3 of this code, no
2 individual may be involuntarily committed to a mental health facility or state hospital except by
3 order entered of record at any time by the circuit court of the county in which the person resides or
4 was found, or if the individual is hospitalized in a mental health facility or state hospital located in a
5 county other than where he or she resides or was found, in the county of the mental health facility
6 and then only after a full hearing on issues relating to the necessity of committing an individual to a
7 mental health facility or state hospital. If the individual objects to the hearing being held in the
8 county where the mental health facility is located, the hearing shall be conducted in the county of
9 the individual's residence. Notwithstanding the provisions of this code to the contrary, all hearings
10 for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-
11 1 *et al.* of this code shall be held by the circuit court of the county that has jurisdiction over the
12 person for the criminal charges and such circuit court shall have jurisdiction over the involuntary
13 final civil commitment of such person.

14 (b) *How final commitment proceedings are commenced.* — Final commitment proceedings
15 for an individual may be commenced by the filing of a written application under oath by an adult
16 person having personal knowledge of the facts of the case. The certificate or affidavit is filed with
17 the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a
18 resident or where he or she may be found, or the county of a mental health facility if he or she is
19 hospitalized in a mental health facility or state hospital located in a county other than where he or
20 she resides or may be found. Notwithstanding anything any provision of this code to the contrary,
21 all hearings for the involuntary final civil commitment of a person who is committed in accordance
22 with §27-6A-1 *et seq.* of this code shall be commenced only upon the filing of a Certificate of the
23 Licensed Certifier at the mental health facility where the person is currently committed.

24 (c) *Oath; contents of application; who may inspect application; when application cannot be*
25 *filed.* —

26 (1) The person making the application shall do so under oath.

27 (2) The application shall contain statements by the applicant that the individual is likely to
28 cause serious harm to self or others due to what the applicant believes are symptoms of mental
29 illness or substance use disorder. Except for persons sought to be committed as provided in §27-
30 6A-1 *et seq.* of this code, the applicant shall state in detail the recent overt acts upon which the
31 clinical opinion is based.

32 (3) The written application, certificate, affidavit, and any warrants issued pursuant thereto,
33 including any related documents filed with a circuit court, mental hygiene commissioner, or
34 magistrate for the involuntary hospitalization of an individual are not open to inspection by any
35 person other than the individual, unless authorized by the individual or his or her legal
36 representative or by order of the circuit court. The records may not be published unless authorized
37 by the individual or his or her legal representative. Disclosure of these records may, however, be
38 made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to
39 the Federal National Instant Criminal Background Check System established pursuant to section
40 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state
41 mental health registry, in accordance with §61-7A-1 *et seq.* of this code, and the sheriff of a county
42 performing background investigations pursuant to §61-7-1 *et seq.* of this code. Disclosure may
43 also be made to the prosecuting attorney and reviewing court in an action brought by the individual
44 pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

45 (4) Applications shall be denied for individuals as provided in §27-5-2(a) of this code.

46 (d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of*
47 *certificate.* —

48 (1) The applicant shall file with his or her application the certificate of a physician or a
49 psychologist stating that in his or her opinion the individual is mentally ill or has a substance use
50 disorder and that because of the mental illness or substance use disorder, the individual is likely to
51 cause serious harm to self or others and requires continued commitment and treatment, and
52 should be hospitalized. Except for persons sought to be committed as provided in §27-6A-1 *et seq.*

53 of this code, the certificate shall state in detail the recent overt acts on which the conclusion is
54 based, including facts that less restrictive interventions and placements were considered but are
55 not appropriate and available. The applicant shall further file with his or her application the names
56 and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

57 (2) A certificate is not necessary when an affidavit is filed by the applicant showing facts
58 and the individual has refused to submit to examination by a physician or a psychologist.

59 (e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the
60 mental hygiene commissioner or circuit court shall review the application, and if it is determined
61 that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix a
62 date for and have the clerk of the circuit court give notice of the hearing:

63 (1) To the individual;

64 (2) To the applicant or applicants;

65 (3) To the individual's spouse, one of the parents or guardians, or, if the individual does not
66 have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next
67 of kin is not the applicant;

68 (4) To the mental health authorities serving the area;

69 (5) To the circuit court in the county of the individual's residence if the hearing is to be held
70 in a county other than that of the individual's residence; and

71 (6) To the prosecuting attorney of the county in which the hearing is to be held.

72 (f) The notice shall be served on the individual by personal service of process not less than
73 eight days prior to the date of the hearing and shall specify:

74 (1) The nature of the charges against the individual;

75 (2) The facts underlying and supporting the application of involuntary commitment;

76 (3) The right to have counsel appointed;

77 (4) The right to consult with and be represented by counsel at every stage of the
78 proceedings; and

79 (5) The time and place of the hearing.

80 The notice to the individual's spouse, parents or parent or guardian, the individual's adult
81 next of kin, or to the circuit court in the county of the individual's residence may be by personal
82 service of process or by certified or registered mail, return receipt requested, and shall state the
83 time and place of the hearing.

84 (g) *Examination of individual by court-appointed physician, psychologist, advanced nurse*
85 *practitioner, or physician ~~assistant~~ associate; custody for examination; dismissal of proceedings.*

86 —

87 (1) Except as provided in subdivision (3) of this subsection, and except when a Certificate
88 of the Licensed Examiner and an application for final civil commitment at the mental health facility
89 where the person is currently committed has been completed and filed, within a reasonable time
90 after notice of the commencement of final commitment proceedings is given, the circuit court or
91 mental hygiene commissioner shall appoint a physician, psychologist, an advanced nurse
92 practitioner with psychiatric certification, or a physician ~~assistant~~ associate with advanced duties
93 in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene
94 commissioner his or her findings as to the mental condition or substance use disorder of the
95 individual and the likelihood of causing serious harm to self or others. Any such report shall include
96 the names and last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

97 (2) If the designated physician, psychologist, advanced nurse practitioner, or physician
98 ~~assistant~~ associate reports to the circuit court or mental hygiene commissioner that the individual
99 has refused to submit to an examination, the circuit court or mental hygiene commissioner shall
100 order him or her to submit to the examination. The circuit court or mental hygiene commissioner
101 may direct that the individual be detained or taken into custody for the purpose of an immediate
102 examination by the designated physician, psychologist, nurse practitioner, or physician ~~assistant~~
103 associate. All orders shall be directed to the sheriff of the county or other appropriate law-
104 enforcement officer. After the examination has been completed, the individual shall be released

105 from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

106 (3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician
107 ~~assistant~~ associate do not confirm that the individual is mentally ill or has a substance use disorder
108 and might be harmful to self or others, then the proceedings for involuntary hospitalization shall be
109 dismissed.

110 (h) *Rights of the individual at the final commitment hearing; seven days' notice to counsel*
111 *required.* —

112 (1) The individual shall be present at the final commitment hearing, and he or she, the
113 applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify
114 and to present and cross-examine witnesses.

115 (2) If the individual has not retained counsel, the court or mental hygiene commissioner, at
116 least six days prior to hearing, shall appoint a competent attorney and shall inform the individual of
117 the name, address, and telephone number of his or her appointed counsel.

118 (3) The individual has the right to have an examination by an independent expert of his or
119 her choice and to present testimony from the expert as a medical witness on his or her behalf. The
120 cost of the independent expert is paid by the individual unless he or she is indigent.

121 (4) The individual may not be compelled to be a witness against himself or herself.

122 (i) *Duties of counsel representing individual; payment of counsel representing indigent.* —

123 (1) Counsel representing an individual shall conduct a timely interview, make investigation,
124 and secure appropriate witnesses, be present at the hearing, and protect the interests of the
125 individual.

126 (2) Counsel representing an individual is entitled to copies of all medical reports,
127 psychiatric or otherwise.

128 (3) The circuit court, by order of record, may allow the attorney a reasonable fee not to
129 exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et*
130 *seq.* of this code.

131 (j) Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing. —

132 (1) The circuit court or mental hygiene commissioner shall hear evidence from all
133 interested parties in chamber, including testimony from representatives of the community mental
134 health facility.

135 (2) The circuit court or mental hygiene commissioner shall receive all relevant and material
136 evidence which may be offered.

137 (3) The circuit court or mental hygiene commissioner is bound by the rules of evidence
138 promulgated by the Supreme Court of Appeals except that statements made to health care
139 professionals appointed under subsection (g) of this section by the individual may be admitted into
140 evidence by the health care professional's testimony, notwithstanding failure to inform the
141 individual that this statement may be used against him or her. A health care professional testifying
142 shall bring all records pertaining to the individual to the hearing. The medical evidence obtained
143 pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged
144 information for purposes of a hearing pursuant to this section.

145 (4) All final commitment proceedings shall be reported or recorded, whether before the
146 circuit court or mental hygiene commissioner, and a transcript made available to the individual, his
147 or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further
148 proceedings. In any case where an indigent person intends to pursue further proceedings, the
149 circuit court shall, by order entered of record, authorize, and direct the court reporter to furnish a
150 transcript of the hearings.

151 (k) *Requisite findings by the court.* —

152 (1) Upon completion of the final commitment hearing and the evidence presented in the
153 hearing, the circuit court or mental hygiene commissioner shall make findings as to the following
154 based upon clear and convincing evidence:

155 (A) Whether the individual is mentally ill or has a substance use disorder;

156 (B) Whether, as a result of illness or substance use disorder, the individual is likely to cause

157 serious harm to self or others if allowed to remain at liberty and requires continued commitment
158 and treatment;

159 (C) Whether the individual is a resident of the county in which the hearing is held or
160 currently is a patient at a mental health facility in the county; and

161 (D) Whether there is a less restrictive alternative than commitment appropriate for the
162 individual that is appropriate and available. The burden of proof of the lack of a less restrictive
163 alternative than commitment is on the person or persons seeking the commitment of the individual:
164 *Provided*, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific
165 finding shall be made that the commitment of, or treatment for, the individual requires inpatient
166 hospital placement and that no suitable outpatient community-based treatment program exists
167 that is appropriate and available in the individual's area.

168 (2) The findings of fact shall be incorporated into the order entered by the circuit court and
169 must be based upon clear, cogent, and convincing proof.

170 (l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of*
171 *court; expiration of order.* —

172 (1) Upon the requisite findings, the circuit court may order the individual to a mental health
173 facility or state hospital for a period not to exceed 90 days except as otherwise provided in this
174 subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et*
175 *seq.* of this code, the chief medical officer of the mental health facility or state hospital shall
176 conduct a clinical assessment of the individual at least every 30 days to determine if the individual
177 requires continued placement and treatment at the mental health facility or state hospital and
178 whether the individual is suitable to receive any necessary treatment at an outpatient community-
179 based treatment program. If at any time the chief medical officer, acting in good faith and in a
180 manner consistent with the standard of care, determines that: (i) The individual is suitable for
181 receiving outpatient community-based treatment; (ii) necessary outpatient community-based
182 treatment is available in the individual's area as evidenced by a discharge and treatment plan

183 jointly developed by the department and the comprehensive community mental health center or
184 licensed behavioral health provider; and (iii) the individual's clinical presentation no longer
185 requires inpatient commitment, the chief medical officer shall provide written notice to the court of
186 record and prosecuting attorney as provided in subdivision (2) of this section that the individual is
187 suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice
188 unless the court of record stays the discharge of the individual. In the event the court stays the
189 discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the
190 individual shall be thereafter discharged unless the court finds by clear and convincing evidence
191 that the individual is a significant and present danger to self or others, and that continued
192 placement at the mental health facility or state hospital is required.

193 If the chief medical officer determines that the individual requires commitment and
194 treatment at the mental health facility or state hospital at any time for a period longer than 90 days,
195 then the individual shall remain at the mental health facility or state hospital until the chief medical
196 officer of the mental health facility or state hospital determines that the individual's clinical
197 presentation no longer requires further commitment and treatment. The chief medical officer shall
198 provide notice to the court, the prosecuting attorney, the individual, and the individual's guardian or
199 attorney, or both, if applicable, that the individual requires commitment and treatment for a period
200 in excess of 90 days and, in the notice, the chief medical officer shall describe how the individual
201 continues to meet commitment criteria and the need for ongoing commitment and treatment. The
202 court, prosecuting attorney, the individual, or the individual's guardian or attorney, or both, if
203 applicable, may request any information from the chief medical officer that the court or prosecuting
204 attorney considers appropriate to justify the need for the individual's ongoing commitment and
205 treatment. The court may hold any hearing that it considers appropriate.

206 (2) Notice to the court of record and prosecuting attorney shall be provided by personal
207 service or certified mail, return receipt requested. The chief medical officer shall make the
208 following findings:

209 (A) Whether the individual has a mental illness or substance use disorder that does not
210 require inpatient treatment, and the mental illness or serious emotional disturbance is in
211 substantial remission;

212 (B) Whether the individual has the independent ability to manage safely the risk factors
213 resulting from his or her mental illness or substance use disorder and is not likely to deteriorate to
214 the point that the individual will pose a likelihood of serious harm to self or others without continued
215 commitment and treatment;

216 (C) Whether the individual is likely to participate in outpatient treatment with a legal
217 obligation to do so;

218 (D) Whether the individual is not likely to participate in outpatient treatment unless legally
219 obligated to do so;

220 (E) Whether the individual is capable of surviving safely in freedom by himself or herself or
221 with the help of willing and responsible family members, guardian, or friends; and

222 (F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to
223 ongoing commitment.

224 (3) The individual may not be detained in a mental health facility or state hospital for a
225 period in excess of 10 days after a final commitment hearing pursuant to this section unless an
226 order has been entered and received by the facility.

227 (4) An individual committed pursuant to §27-6A-3 of this code may be committed for the
228 period he or she is determined by the court to remain an imminent danger to self or others.

229 (5) If the commitment of the individual as provided under subdivision (1) of this subsection
230 exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall
231 be held by the mental hygiene commissioner or by the circuit court of the county as provided in
232 subsection (a) of this section.

233 (m) *Dismissal of proceedings.* —If the individual is discharged as provided in subsection (l)
234 of this section, the circuit court or mental hygiene commissioner shall dismiss the proceedings.

235 (n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in
236 which an order directing hospitalization is entered, if not in the county of the individual's residence,
237 shall immediately upon entry of the order forward a certified copy of the order to the clerk of the
238 circuit court of the county of which the individual is a resident.

239 (o) *Consideration of transcript by circuit court of county of individual's residence; order of*
240 *hospitalization; execution of order.* —

241 (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization
242 should be ordered but finds that the individual is not a resident of the county in which the hearing is
243 held and the individual is not currently a resident of a mental health facility or state hospital, a
244 transcript of the evidence adduced at the final commitment hearing of the individual, certified by
245 the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the
246 county of which the individual is a resident. The clerk shall immediately present the transcript to
247 the circuit court or mental hygiene commissioner of the county.

248 (2) If the circuit court or mental hygiene commissioner of the county of the residence of the
249 individual is satisfied from the evidence contained in the transcript that the individual should be
250 hospitalized as determined by the standard set forth in subdivision one of this subsection, the
251 circuit court shall order the appropriate hospitalization as though the individual had been brought
252 before the circuit court or its mental hygiene commissioner in the first instance.

253 (3) This order shall be transmitted immediately to the clerk of the circuit court of the county
254 in which the hearing was held who shall execute the order promptly.

255 (p) *Order of custody to responsible person.* — In lieu of ordering the individual to a mental
256 health facility or state hospital, the circuit court may order the individual delivered to some
257 responsible person who will agree to take care of the individual and the circuit court may take from
258 the responsible person a bond in an amount to be determined by the circuit court with condition to
259 restrain and take proper care of the individual until further order of the court.

260 (q) *Individual not a resident of this state.* — If the individual is found to be mentally ill or to

261 have a substance use disorder by the circuit court or mental hygiene commissioner is a resident of
262 another state, this information shall be immediately given to the Secretary of the Department of
263 Health and Human Resources, or to his or her designee, who shall make appropriate
264 arrangements for transfer of the individual to the state of his or her residence conditioned on the
265 agreement of the individual, except as qualified by the interstate compact on mental health.

266 (r) *Report to the Secretary of the Department of Health and Human Resources.* —

267 (1) The chief medical officer of a mental health facility or state hospital admitting a patient
268 pursuant to proceedings under this section shall immediately make a report of the admission to the
269 Secretary of the Department of Health and Human Resources or to his or her designee.

270 (2) Whenever an individual is released from custody due to the failure of an employee of a
271 mental health facility or state hospital to comply with the time requirements of this article, the chief
272 medical officer of the mental health or state hospital facility shall immediately, after the release of
273 the individual, make a report to the Secretary of the Department of Health and Human Resources
274 or to his or her designee of the failure to comply.

275 (s) *Payment of some expenses by the state; mental hygiene fund established; expenses*
276 *paid by the county commission.* —

277 (1) The state shall pay the commissioner's fee and the court reporter fees that are not paid
278 and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within
279 the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

280 (2) The county commission shall pay out of the county treasury all other expenses incurred
281 in the hearings conducted under the provisions of this article whether or not hospitalization is
282 ordered, including any fee allowed by the circuit court by order entered of record for any physician,
283 psychologist, and witness called by the indigent individual. The copying and mailing costs
284 associated with providing notice of the final commitment hearing and issuance of the final order
285 shall be paid by the county where the involuntary commitment petition was initially filed.

286 (3) Effective July 1, 2022, the Department of Health and Human Resources shall

287 reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law-enforcement
288 agency for the actual costs related to transporting a patient who has been involuntary committed.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

1 (a) The State Boxing Commission, heretofore created, is hereby continued and renamed
2 the State Athletic Commission. The commission shall consist of five persons appointed by the
3 Governor, by and with the consent of the Senate, no more than three of whom shall belong to the
4 same political party and no two of whom shall be residents of the same county at the same time.
5 One member shall have at least three years of experience in the sport of boxing. One member
6 shall have at least three years of experience in the sport of mixed martial arts. One member shall
7 have at least three years of experience in the health care industry as a licensed physician,
8 registered nurse, nurse practitioner, or ~~physicians'~~physician assistant associate. Two members
9 shall be citizen members who are not licensed under the provisions of this article and who do not
10 perform any services related to the persons regulated under this article. The members shall serve
11 without pay except that each member shall receive \$100 for each day that he or she attends and
12 participates in a public meeting in which the commission makes or deliberates towards an official
13 act: *Provided*, That the compensation a member may receive pursuant to this subsection during
14 each fiscal year may not exceed \$2,000.

15 (b) At the expiration of the term of each member, his or her successor shall be appointed by
16 the Governor for a term of four years. If there is a vacancy in the board, the vacancy shall likewise
17 be filled by appointment by the Governor and the Governor shall likewise have the power to
18 remove any commissioner at his or her pleasure.

19 (c) Any three members of the commission shall constitute a quorum for the exercise of the
20 power or authority conferred upon it. The members of the commission shall, at the first meeting

21 after their appointment, elect one of their number chairman of the commission and another of their
 22 number secretary of the commission, shall adopt a seal for the commission, and shall make such
 23 rules for the administration of their office, not inconsistent herewith, as they may consider
 24 expedient; and they may hereafter amend or abrogate such rules.

25 (d) The concurrence of at least three commissioners is necessary to render a choice or
 26 decision of the commission except that, notwithstanding the requirements of the Open
 27 Governmental Proceedings Act, §6-9a-1 *et seq.* of this code, a quorum of the commission may
 28 vote in writing to approve changes to the roster of participants or the roster of officials if the need
 29 for the substitution(s) is made known to the commission within 48 hours of an event that the
 30 commission previously approved: *Provided*, That the substitution(s) is necessary to effectuate the
 31 match: *Provided, however*, That the written decision of the commission is presented at the next
 32 scheduled meeting of the commission and recorded in its minutes.

ARTICLE 29. VOLUNTEER FOR NONPROFIT YOUTH ORGANIZATIONS.

§29-29-3. Definitions.

1 As used in this article:

2 (a) "Applicant" means any emergency medical service applicant, law-enforcement
 3 applicant or medical services applicant, that is registered as a volunteer of the nonprofit
 4 organization, making application for a nonprofit volunteer permit under the provisions of this
 5 article.

6 (b) "Appropriate licensing agency" means the board, department, division or other agency
 7 in each jurisdiction charged with the licensing, certification or permitting of persons performing
 8 services of the nature and kind described or duties provided for in this article.

9 (c) "Emergency medical service applicant" means a person authorized to provide
 10 emergency medical services in West Virginia, or in another state who but for this article would be
 11 required to obtain a certification from the Commissioner of the Bureau for Public Health pursuant
 12 to article eight, chapter sixteen of this code to perform emergency medical services in this state.

13 (d) "Law-enforcement applicant" means a person authorized to work as a law-enforcement
14 officer in West Virginia, or in another state who but for this article would be required to obtain
15 authorization pursuant to article twenty-nine, chapter thirty of this code to work as a law-
16 enforcement officer in this state: *Provided*, That any person authorized to work as a law-
17 enforcement officer in another state shall have completed a training program approved by the
18 governing authority of a political subdivision in order to work as a law-enforcement officer in that
19 state.

20 (e) "Medical services applicant" means a person authorized to provide medical services in
21 West Virginia, or in another state who but for this article would be required to obtain authorization
22 to practice in this state, and who is a:

23 (1) Practitioner of medicine, surgery or podiatry as defined in article three, chapter thirty of
24 this code;

25 (2) Physician assistant associate as defined in section three, article three, chapter thirty of
26 this code;

27 (3) Chiropractor as defined in section three, article sixteen, chapter thirty of this code;

28 (4) Dentist or dental assistant as defined in article four, chapter thirty of this code;

29 (5) Nurse as defined in article seven or seven-a, chapter thirty of this code;

30 (6) Nurse practitioner as defined in section one, article four-b, chapter nine of this code;

31 (7) Occupational therapist as defined in section three, article twenty-eight, chapter thirty of
32 this code;

33 (8) Practitioner of optometry as defined in section three, article eight, chapter thirty of this
34 code;

35 (9) Osteopathic physician or surgeon as defined in article fourteen, chapter thirty of this
36 code;

37 (10) Osteopathic physician ~~assistant~~ associate as defined in article fourteen-a, chapter
38 thirty of this code;

- 39 (11) Pharmacist as defined in article five, chapter thirty of this code;
- 40 (12) Physical therapist as defined in article twenty, chapter thirty of this code;
- 41 (13) Professional counselor as defined in section three, article thirty-one, chapter thirty of
42 this code;
- 43 (14) Practitioner of psychology or school psychologist as defined in section two, article
44 twenty-one, chapter thirty of this code;
- 45 (15) Radiologic technologist, nuclear medicine technologist or practitioner of medical
46 imaging and radiation therapy technology as defined in section four, article twenty-three, chapter
47 thirty of this code; and
- 48 (16) Social worker licensed by the state Board of Social Work Examiners pursuant to
49 article thirty, chapter thirty of this code.
- 50 (f) "Nonprofit volunteer permit" or "permit" means a permit issued to an applicant pursuant
51 to the provisions of this article.
- 52 (g) "Nonprofit volunteer permittee" or "permittee" means a person holding a nonprofit
53 volunteer permit issued under the provisions of this article.
- 54 (h) "Nonprofit youth organization" or "organization" means any nonprofit organization,
55 including any subsidiary, affiliated or other related entity within its corporate or business structure,
56 that has been chartered by the United States Congress to help train young people to do things for
57 themselves and others, and that has established an area of at least six thousand contiguous acres
58 within West Virginia in which to provide adventure or recreational activities for these young people
59 and others.
- 60 (i) "Nonprofit volunteer organization medical director" means an individual licensed in West
61 Virginia as a practitioner of medicine or surgery pursuant to article three, chapter thirty of this code,
62 or an individual licensed in West Virginia as an osteopathic physician or surgeon pursuant to
63 article fourteen, chapter thirty of this code, that has been designated by the nonprofit volunteer
64 organization to serve as the medical director for an event or program offered by the organization.

ARTICLE 30. DEFINITIONS.

§29-30-2.

Definitions.

1 The following words have the following meaning:

2 (a) "Credentialing" means obtaining, verifying and assessing the qualifications of a health
3 practitioner to provide treatment, care or services in or for a health facility.

4 (b) "Disaster relief organization" means an entity that provides emergency or disaster relief
5 services that include health or veterinary services provided by volunteer health practitioners and
6 that:

7 (1) Is designated or recognized as a provider of those services pursuant to a disaster
8 response and recovery plan adopted by an agency of the federal government or by the Governor
9 of this state; or

10 (2) Regularly plans and conducts its activities in coordination with an agency of the federal
11 government or any agency designated by the Governor.

12 (c) "Emergency" means an event or condition that is an emergency, disaster or public
13 health emergency pursuant to a declaration of the Governor or any agency designated by the
14 Governor.

15 (d) "Emergency declaration" means a declaration of emergency issued by the Governor or
16 his or her designee pursuant to the laws of this state.

17 (e) "Emergency Management Assistance Compact" means the interstate compact
18 approved by Congress by Public Law No. 104-321, 110 Stat. 3877.

19 (f) "Entity" means a person other than an individual.

20 (g) "Health facility" means an entity licensed pursuant to the laws of this or another state to
21 provide health or veterinary services.

22 (h) "Health practitioner" means an individual licensed pursuant to the laws of this or
23 another state to provide health or veterinary services. For the purposes of this article, a health
24 practitioner includes a physician, a physician ~~assistant~~ associate, a dentist, a dental hygienist, a

25 pharmacist, a pharmacy technician, a pharmacy intern, a registered professional nurse, a licensed
26 practical nurse, an optometrist, an osteopathic physician, a chiropractor, a physical therapist, a
27 psychologist, an occupational therapist and a veterinarian.

28 (i) "Health services" means the provision of treatment, care, advice or guidance, or other
29 services or supplies, related to the health or death of individuals or human populations, to the
30 extent necessary to respond to an emergency, including:

31 (1) The following, concerning the physical or mental condition or functional status of an
32 individual or affecting the structure or function of the body:

33 (A) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care; and

34 (B) Counseling, assessment, procedures or other services;

35 (2) Sale or dispensing of a drug, a device, equipment or another item to an individual in
36 accordance with a prescription; and

37 (3) Funeral, cremation, cemetery or other mortuary services.

38 (j) "Host entity" means an entity operating in this state which uses volunteer health
39 practitioners to respond to an emergency.

40 (k) "License" means authorization and licensing by an appropriate licensing board to
41 engage in health or veterinary services that are unlawful without the license. The term includes
42 authorization pursuant to the laws of this state to an individual to provide health or veterinary
43 services based upon a national certification issued by a public or private entity.

44 (l) "Person" means an individual, corporation, business trust, trust, partnership, limited
45 liability company, association, joint venture, public corporation, government or governmental
46 subdivision, agency or instrumentality or any other legal or commercial entity.

47 (m) "Privileging" means the authorizing by an appropriate authority, such as a governing
48 body, of a health practitioner to provide specific treatment, care or services at a health facility
49 subject to limits based on factors that include license, education, training, experience,
50 competence, health status and specialized skill.

51 (n) "Scope of practice" means the extent of the authorization to provide health or veterinary
52 services granted to a health practitioner by a license issued to the practitioner in the state in which
53 the principal part of the practitioner's services is rendered, including any conditions imposed by the
54 licensing authority.

55 (o) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
56 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the
57 United States.

58 (p) "Veterinary services" means the provision of treatment, care, advice or guidance or
59 other services or supplies related to the health or death of an animal or to animal populations, to
60 the extent necessary to respond to an emergency, including:

61 (1) Diagnosis, treatment or prevention of an animal disease, injury or other physical or
62 mental condition by the prescription, administration or dispensing of a vaccine, medicine, surgery
63 or therapy;

64 (2) Use of a procedure for reproductive management; and

65 (3) Monitoring and treatment of animal populations for diseases that have spread or
66 demonstrate the potential to spread to humans.

67 (q) "Volunteer health practitioner" means a health practitioner who provides health or
68 veterinary services, whether or not the practitioner receives compensation for those services. The
69 term does not include a practitioner who receives compensation pursuant to a preexisting
70 employment relationship with a host entity or affiliate which requires the practitioner to provide
71 health services in this state, unless the practitioner is not a resident of this state and is employed
72 by a disaster relief organization providing services in this state while an emergency declaration is
73 in effect.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF

EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.**§30-1-7a. Continuing education.**

1 (a) A board referred to in this chapter shall establish continuing education requirements as
2 a prerequisite to license renewal. A board shall develop continuing education criteria appropriate
3 to its discipline, which shall include, but not be limited to, course content, course approval, hours
4 required and reporting periods.

5 (b) Notwithstanding any other provision of this code or the provision of a legislative rule to
6 the contrary, each person issued a license to practice medicine and surgery, a license to practice
7 podiatry or licensed as a physician ~~assistant~~ associate by the West Virginia Board of Medicine;
8 each person issued a license to practice dentistry by the West Virginia Board of Dental Examiners,
9 each person issued a license to practice optometry by the West Virginia Board of Optometry, each
10 person licensed as a pharmacist by the West Virginia Board of Pharmacy, each person licensed to
11 practice registered professional nursing or licensed as an advanced nurse practitioner by the West
12 Virginia Board of Examiners for Registered Professional Nurses, each person licensed as a
13 licensed practical nurse by the West Virginia State Board of Examiners for Licensed Practical
14 Nurses and each person licensed to practice medicine and surgery as an osteopathic physician
15 and surgeon or licensed or certified as an osteopathic as physician ~~assistant~~ associate by the
16 West Virginia Board of Osteopathy shall complete drug diversion training, best-practice
17 prescribing of controlled substances training, and training on prescribing and administration of an
18 opioid antagonist and other relevant trainings as promulgated by the appropriate licensing board,
19 as the trainings are established by his or her respective licensing board, if that person prescribes,
20 administers or dispenses a controlled substance, as that term is defined in section one hundred
21 one, article one, chapter sixty-a of this code.

22 (1) Notwithstanding any other provision of this code or the provision of any legislative rule
23 to the contrary, the West Virginia Board of Medicine, the West Virginia Board of Dental Examiners,
24 the West Virginia Board of Optometry, the West Virginia Board of Pharmacy, the West Virginia

25 Board of Examiners for Registered Professional Nurses, the West Virginia State Board of
26 Examiners for Licensed Practical Nurses and the West Virginia Board of Osteopathy shall
27 establish continuing education requirements and criteria appropriate to their respective discipline
28 on the subject of drug diversion training, best-practice prescribing of controlled substances
29 training and prescribing and administration of an opioid antagonist training for each person issued
30 a license or certificate by their respective board who prescribes, administers or dispenses a
31 controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-
32 a of this code, and shall develop a certification form pursuant to subdivision (b)(2) of this section.

33 (2) Each person who receives his or her initial license or certificate from any of the boards
34 set forth in subsection (b) of this section shall complete the continuing education requirements set
35 forth in subsection (b) of this section within one year of receiving his or her initial license from that
36 board and each person licensed or certified by any of the boards set forth in subsection (b) of this
37 section who has held his or her license or certificate for longer than one year shall complete the
38 continuing education requirements set forth in subsection (b) of this section as a prerequisite to
39 each license renewal: *Provided*, That a person subject to subsection (b) of this section may waive
40 the continuing education requirements for license renewal set forth in subsection (b) of this section
41 if he or she completes and submits to his or her licensing board a certification form developed by
42 his or her licensing board attesting that he or she has not prescribed, administered or dispensed a
43 controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-
44 a of this code, during the entire applicable reporting period.

45 (c) Notwithstanding any other provision of this code or the provision of any legislative rule
46 to the contrary, each person licensed to practice registered professional nursing or licensed as an
47 advanced nurse practitioner by the West Virginia Board of Examiners for Registered Professional
48 Nurses, each person licensed as a licensed practical nurse by the West Virginia State Board of
49 Examiners for Licensed Practical Nurses, each person licensed to practice psychology by the
50 Board of Examiners of Psychologists, each person licensed to practice social work by the West

51 Virginia Board of Social Work and each person licensed to practice professional counseling by the
 52 West Virginia Board of Examiners in Counseling shall complete two hours of continuing education
 53 for each reporting period on mental health conditions common to veterans and family members of
 54 veterans, as the continuing education is established by his or her respective licensing board. In
 55 cooperation with the Secretary of the Department of Veterans' Assistance, the continuing
 56 education shall include training on inquiring about whether the patients are veterans or family
 57 members of veterans, and screening for conditions such as post-traumatic stress disorder, risk of
 58 suicide, depression and grief and prevention of suicide. The two hours shall be part of the total
 59 hours of continuing education required by each board and not two additional hours.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-2. Purpose.

1 The purpose of this article is to provide for the licensure and professional discipline of
 2 physicians and podiatrists and for the licensure and professional discipline of physician ~~assistants~~
 3 associates and to provide a professional environment that encourages the delivery of quality
 4 medical services within this state.

§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, to practice podiatry, and to practice as
 8 physician ~~assistants~~ associates in this state under the supervision of physicians licensed under
 9 this article. The board shall continue to be a regulatory and disciplinary body for the practice of

10 medicine and surgery, the practice of podiatry, and for physician ~~assistants~~ associates in this state.

11 The board shall consist of 15 members. One member shall be the state health officer ex
12 officio, with the right to vote as a member of the board. The other 14 members shall be appointed
13 by the Governor, with the advice and consent of the Senate. Eight of the members shall be
14 appointed from among individuals holding the degree of doctor of medicine, and one shall hold the
15 degree of doctor of podiatric medicine. Two members shall be physician ~~assistants~~ associates
16 licensed by the board. Each of these members must be duly licensed to practice his or her
17 profession in this state on the date of appointment and must have been licensed and actively
18 practicing that profession for at least five years immediately preceding the date of appointment.
19 Three lay members shall be appointed to represent health care consumers. Neither the lay
20 members nor any person of the lay members' immediate families shall be a provider of or be
21 employed by a provider of health care services. The state health officer's term shall continue for
22 the period that he or she holds office as state health officer. Each other member of the board shall
23 be appointed to serve a term of five years: *Provided*, That the members of the Board of Medicine
24 holding appointments on the effective date of this section shall continue to serve as members of
25 the Board of Medicine until the expiration of their term unless sooner removed. Each term shall
26 begin on October 1 of the applicable year and a member may not be appointed to more than two
27 consecutive full terms on the board.

28 A person is not eligible for membership on the board who is a member of any political party
29 executive committee or, with the exception of the state health officer, who holds any public office or
30 public employment under the federal government or under the government of this state or any
31 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.

§30-3-7. Powers and duties of West Virginia Board of Medicine.

1 (a) The board is autonomous and, in accordance with this article, shall determine
2 qualifications of applicants for licenses to practice medicine and surgery, to practice podiatry, and
3 to practice as a physician ~~assistant~~ associate for a physician licensed under this article, and shall
4 issue licenses to qualified applicants and shall regulate the professional conduct and discipline of
5 such individuals. In carrying out its functions, the board may:

6 (1) Adopt such rules as are necessary to carry out the purposes of this article;

7 (2) Hold hearings and conduct investigations, subpoena witnesses and documents and
8 administer oaths;

9 (3) Institute proceedings in the courts of this state to enforce its subpoenas for the
10 production of witnesses and documents and its orders and to restrain and enjoin violations of this
11 article and of any rules promulgated under it;

12 (4) Employ investigators, attorneys, hearing examiners, consultants and such other
13 employees as may be necessary, who shall be exempt from the classified service of the Division of
14 Personnel and who shall serve at the will and pleasure of the board. In addition, all personnel
15 employed through the Department of Health and Human Resources on June 30, 2009, to provide
16 services for the board are hereby transferred to the board effective July 1, 2009. However, the
17 employment, salary, benefits or position classification of any person transferred under this section
18 may not be reduced or diminished by reason of this section. All persons transferred shall retain
19 their coverage under the classified service of the Division of Personnel and all matters relating to
20 job classification, job tenure and conditions of employment shall remain in force and effect from
21 and after the date of this section, to the same extent as if this section had not been reenacted.

22 Also, nothing herein shall prohibit the disciplining or dismissal of any employee for cause.

23 (5) Enter into contracts and receive and disburse funds according to law;

24 (6) Establish and certify standards for the supervision and certification of physician
25 assistants associates;

26 (7) Authorize medical and podiatry corporations in accordance with the limitations of
27 section fifteen of this article to practice medicine and surgery or podiatry through duly licensed
28 physicians or podiatrists; and

29 (8) Perform such other duties as are set forth in this article or otherwise provided for in this
30 code.

31 (b) The board shall submit an annual report of its activities to the Legislature. The report
32 shall include a statistical analysis of complaints received, charges investigated, charges
33 dismissed after investigation, the grounds for each such dismissal and disciplinary proceedings
34 and disposition.

**§30-3-9. Records of board; expungement; examination; notice; public information;
voluntary agreements relating to alcohol or chemical dependency;
confidentiality of same; physician-patient privileges.**

1 (a) The board shall maintain a permanent record of the names of all physicians, podiatrists,
2 and physician assistants associates, licensed, certified or otherwise lawfully practicing in this state
3 and of all persons applying to be so licensed to practice, along with an individual historical record
4 for each such individual containing reports and all other information furnished the board under this
5 article or otherwise. Such record may include, in accordance with rules established by the board,
6 additional items relating to the individual's record of professional practice that will facilitate proper
7 review of such individual's professional competence.

8 (b) Upon a determination by the board that any report submitted to it is without merit, the
9 report shall be expunged from the individual's historical record.

10 (c) A physician, podiatrist, physician assistant associate or applicant, or authorized

11 representative thereof, has the right, upon request, to examine his or her own individual historical
12 record maintained by the board pursuant to this article and to place into such record a statement of
13 reasonable length of his or her own view of the correctness or relevance of any information
14 existing in such record. Such statement shall at all times accompany that part of the record in
15 contention.

16 (d) A physician, podiatrist, physician ~~assistant~~ associate or applicant has the right to seek
17 through court action the amendment or expungement of any part of his or her historical record.

18 (e) A physician, podiatrist, physician ~~assistant~~ associate or applicant shall be provided
19 written notice within 30 days of the placement and substance of any information in his or her
20 individual historical record that pertains to him or her and that was not submitted to the board by
21 him or her.

22 (f) Except for information relating to biographical background, education, professional
23 training and practice, a voluntary agreement entered into pursuant to subsection (h) of this section
24 and which has been disclosed to the board, prior disciplinary action by any entity, or information
25 contained on the licensure application, the board shall expunge information in an individual's
26 historical record unless it has initiated a proceeding for a hearing upon such information within two
27 years of the placing of the information into the historical record.

28 (g) Orders of the board relating to disciplinary action against a physician, podiatrist or
29 physician ~~assistant~~ associate are public information.

30 (h)(1) In order to encourage voluntary participation in monitored alcohol chemical
31 dependency or major mental illness programs and in recognition of the fact that major mental
32 illness, alcoholism and chemical dependency are illnesses, a physician, podiatrist or physician
33 ~~assistant~~ associate licensed, certified or otherwise lawfully practicing in this state or applying for a
34 license to practice in this state may enter into a voluntary agreement with the physician health
35 program as defined in section two, article three-d of this chapter. The agreement between the
36 physician, podiatrist or physician ~~assistant~~ associate and the physician health program shall

37 include a jointly agreed upon treatment program and mandatory conditions and procedures to
38 monitor compliance with the program of recovery.

39 (2) Any voluntary agreement entered into pursuant to this subsection shall not be
40 considered a disciplinary action or order by the board, shall not be disclosed to the board and shall
41 not be public information if:

42 (A) Such voluntary agreement is the result of the physician, podiatrist or physician
43 ~~assistant~~ associate self-enrolling or voluntarily participating in the board-designated physician
44 health program;

45 (B) The board has not received nor filed any written complaints regarding said physician,
46 podiatrist or physician ~~assistant~~ associate relating to an alcohol, chemical dependency or major
47 mental illness affecting the care and treatment of patients, nor received any reports pursuant to
48 subsection (b), section fourteen of this article relating to an alcohol or chemical dependency
49 impairment; and

50 (C) The physician, podiatrist or physician ~~assistant~~ associate is in compliance with the
51 voluntary treatment program and the conditions and procedures to monitor compliance.

52 (3) If any physician, podiatrist or physician ~~assistant~~ associate enters into a voluntary
53 agreement with the board-approved physician health program, pursuant to this subsection and
54 then fails to comply with or fulfill the terms of said agreement, the physician health program shall
55 report the noncompliance to the board within twenty-four hours. The board may initiate disciplinary
56 proceedings pursuant to subsection (a), section fourteen of this article or may permit continued
57 participation in the physician health program or both.

58 (4) If the board has not instituted any disciplinary proceeding as provided for in this article,
59 any information received, maintained or developed by the board relating to the alcohol or chemical
60 dependency impairment of any physician, podiatrist or physician ~~assistant~~ associate and any
61 voluntary agreement made pursuant to this subsection shall be confidential and not available for
62 public information, discovery or court subpoena, nor for introduction into evidence in any medical

63 professional liability action or other action for damages arising out of the provision of or failure to
64 provide health care services.

65 In the board's annual report of its activities to the Legislature required under section seven
66 of this article, the board shall include information regarding the success of the voluntary
67 agreement mechanism established therein: *Provided*, That in making such report, the board shall
68 not disclose any personally identifiable information relating to any physician, podiatrist or
69 physician assistant associate participating in a voluntary agreement as provided herein.

70 Notwithstanding any of the foregoing provisions, the board may cooperate with and
71 provide documentation of any voluntary agreement entered into pursuant to this subsection to
72 licensing boards in other jurisdictions of which the board has become aware and may be
73 appropriate.

74 (i) Any physician-patient privilege does not apply in any investigation or proceeding by the
75 board or by a medical peer review committee or by a hospital governing board with respect to
76 relevant hospital medical records, while any of the aforesaid are acting within the scope of their
77 authority: *Provided*, That the disclosure of any information pursuant to this provision shall not be
78 considered a waiver of any such privilege in any other proceeding.

§30-3-11c. Administrative medicine license.

1 (a) For purposes of this section:

2 (1) "Administrative medicine" means administration or management related to the practice
3 of medicine or to the delivery of health care services using the medical knowledge, skill, and
4 judgment of a licensed physician that may affect the health of the public or medical research,
5 excluding clinical trials on humans. Administrative medicine does not include the authority to
6 practice clinical medicine; examine, care for, or treat patients; prescribe medications, including
7 controlled substances; or direct or delegate medical acts or prescriptive authority to others.

8 (2) "Administrative medicine license" means a medical license restricted to the practice of
9 administrative medicine. A physician with an administrative medicine license may manage the

10 integration of clinical medicine, strategy, operations, and other business activities related to the
11 delivery of health care services, advise organizations, both public and private, on health care
12 matters; authorize and deny financial payments for care; organize and direct research programs;
13 review care provided for quality; and perform other similar duties that do not require or involve
14 direct patient care.

15 (3) "Clinical medicine" includes, but is not limited to:

16 (A) Direct involvement in patient evaluation, diagnosis, and treatment;

17 (B) Prescribing, administering, or dispensing any medication;

18 (C) Delegating medical acts, service, or prescriptive authority; and

19 (D) Supervision of physicians and/or podiatric physicians who practice clinical medicine,
20 physician ~~assistants~~ associates who render medical services in collaboration with physicians, or
21 the clinical practice of any other medical professional.

22 (b) The board may issue an administrative medicine license to a physician who:

23 (1) Files a complete application;

24 (2) Pays the applicable fee;

25 (3) Meets all qualifications and criteria for licensure set forth in §30-3-10 of this code and
26 the board's legislative rules; and

27 (4) Demonstrates competency to practice administrative medicine.

28 (c) Administrative medicine licensees may not practice clinical medicine.

29 (d) A physician applying to renew an administrative medicine license must pay the same
30 fees and meet the same requirements for renewing an active status license, including submission
31 of certification of participation in and successful completion of a minimum of 50 hours of continuing
32 medical education satisfactory to the board during the preceding two-year period.

33 (e) The board may deny an application for an administrative medicine and may discipline
34 an administrative medicine licensee who, after a hearing, has been adjudged by the board as
35 unqualified due to any reason set forth in §30-3-14 of this code or the board's rules and pursuant to

36 the processes set forth therein.

37 (f) The board shall propose emergency rules pursuant to the provisions of §29A-3-1 *et seq.*
38 of this code to implement the provisions of this section.

§30-3-15. Certificate of authorization requirements for medical corporations.

1 (a) Unlawful acts. — It is unlawful for any corporation to practice or offer to practice
2 medicine, surgery, podiatric medicine, or to perform medical acts through one or more physician
3 ~~assistants~~ associates in this state without a certificate of authorization issued by the board
4 designating the corporation as an authorized medical corporation.

5 (b) Certificate of authorization for in-state medical corporation. —The board may issue a
6 certificate of authorization for a medical corporation to one or more individuals licensed by the
7 board. Licensees of the West Virginia Board of Osteopathic Medicine may join with licensees of
8 the board to receive a certificate of authorization from the board. Eligible licensees may apply for a
9 certificate of authorization by:

10 (1) Filing a written application with the board on a form prescribed by the board;

11 (2) Furnishing satisfactory proof to the board that each shareholder of the proposed
12 medical or podiatry corporation is a licensed physician pursuant to this article, §30-3E-1 *et seq.*, or
13 §30-14-1 *et seq.* of this code; and

14 (3) Submitting applicable fees which are not refundable.

15 (c) Certificate of authorization for out-of-state medical corporation. — A medical
16 corporation formed outside of this state for the purpose of engaging in the practice of medicine,
17 surgery, and/or podiatric medicine may receive a certificate of authorization from the board to be
18 designated a foreign medical corporation by:

19 (1) Filing a written application with the board on a form prescribed by the board;

20 (2) Furnishing satisfactory proof to the board that the medical corporation has received a
21 certificate of authorization or similar authorization from the appropriate authorities as a medical
22 corporation or professional corporation in its state of incorporation and is currently in good

23 standing with that authority;

24 (3) Furnishing satisfactory proof to the board that at least one shareholder of the proposed
25 medical corporation is a licensed physician or podiatric physician pursuant to this article and is
26 designated as the corporate representative for all communications with the board regarding the
27 designation and continuing authorization of the corporation as a foreign medical corporation;

28 (4) Furnishing satisfactory proof to the board that all of the medical corporation's
29 shareholders are licensed physicians, podiatric physicians, or physician ~~assistants~~ associates in
30 one or more states and submitting a complete list of the shareholders, including each
31 shareholder's name, their state or states of licensure, and their license number(s); and

32 (5) Submitting applicable fees which are not refundable.

33 (d) Notice of certificate of authorization to Secretary of State. — When the board issues a
34 certificate of authorization to a medical corporation, then the board shall notify the Secretary of
35 State that a certificate of authorization has been issued. When the Secretary of State receives a
36 notification from the board, he or she shall attach that certificate of authorization to the corporation
37 application and, upon compliance by the corporation with the pertinent provisions of this code,
38 shall notify the incorporators that the medical corporation, through licensed physicians, podiatrists,
39 and/or physician ~~assistants~~ associates may engage in the practice of medicine, surgery, or the
40 practice of podiatry in West Virginia.

41 (e) Authorized practice of medical corporation. — An authorized medical corporation may
42 only practice medicine and surgery through individual physicians, podiatric physicians, or
43 physician ~~assistants~~ associates licensed to practice medicine and surgery in this state.
44 Physicians, podiatric physicians, and physician ~~assistants~~ associates may be employees rather
45 than shareholders of a medical corporation, and nothing herein requires a license for or other legal
46 authorization of, any individual employed by a medical corporation to perform services for which
47 no license or other legal authorization is otherwise required.

48 (f) Renewal of certificate of authorization. — A medical corporation holding a certificate of

49 authorization shall register biennially, on or before the expiration date on its certificate of
50 authorization, on a form prescribed by the board, and pay a biennial fee. If a medical corporation
51 does not timely renew its certificate of authorization, then its certificate of authorization
52 automatically expires.

53 (g) Renewal for expired certificate of authorization. — A medical corporation whose
54 certificate of authorization has expired may reapply for a certificate of authorization by submitting a
55 new application and application fee in conformity with subsection (b) or (c) of this section.

56 (h) Ceasing operation - In-state medical corporation. — A medical corporation formed in
57 this state and holding a certificate of authorization shall cease to engage in the practice of
58 medicine, surgery, or podiatry when notified by the board that:

59 (1) One of its shareholders is no longer a duly licensed physician, podiatric physician, or
60 physician ~~assistant~~ associate in this state; or

61 (2) The shares of the medical corporation have been sold or transferred to a person who is
62 not licensed by the board or the Board of Osteopathic Medicine. The personal representative of a
63 deceased shareholder shall have a period, not to exceed 12 months from the date of the
64 shareholder's death, to transfer the shares. Nothing herein affects the existence of the medical
65 corporation or its right to continue to operate for all lawful purposes other than the professional
66 practice of licensed physicians, podiatric physicians, and physician ~~assistants~~ associates.

67 (i) Ceasing operation - Out-of-state medical corporation. — A medical corporation formed
68 outside of this state and holding a certificate of authorization shall immediately cease to engage in
69 practice in this state if:

70 (1) The corporate shareholders no longer include at least one shareholder who is licensed
71 to practice in this state pursuant to this article;

72 (2) The corporation is notified that one of its shareholders is no longer a licensed physician,
73 podiatric physician, or physician ~~assistant~~ associate; or

74 (3) The shares of the medical corporation have been sold or transferred to a person who is

75 not a licensed physician, podiatric physician, or physician ~~assistant~~ associate. The personal
76 representative of a deceased shareholder shall have a period, not to exceed 12 months from the
77 date of the shareholder's death, to transfer the shares. In order to maintain its certificate of
78 authorization to practice medicine and surgery, podiatric medicine, or to perform medical acts
79 through one or more physician ~~assistants~~ associates during the 12-month period, the medical
80 corporation shall, at all times, have at least one shareholder who is licensed in this state pursuant
81 to this article. Nothing herein affects the existence of the medical corporation or its right to continue
82 to operate for all lawful purposes other than the professional practice of licensed physicians,
83 podiatric physicians, and physician ~~assistants~~ associates.

84 (j) Notice to Secretary of State. — Within 30 days of the expiration, revocation, or
85 suspension of a certificate of authorization by the board, the board shall submit written notice to
86 the Secretary of State.

87 (k) Unlawful acts. — It is unlawful for any corporation to practice or offer to practice
88 medicine, surgery, podiatric medicine, or to perform medical acts through one or more physician
89 ~~assistants~~ associates after its certificate of authorization has expired or been revoked, or if
90 suspended, during the term of the suspension.

91 (l) Application of section. — Nothing in this section is meant or intended to change in any
92 way the rights, duties, privileges, responsibilities, and liabilities incident to the physician-patient or
93 podiatrist-patient relationship, nor is it meant or intended to change in any way the personal
94 character of the practitioner-patient relationship. Nothing in this section shall be construed to
95 require a hospital licensed pursuant to §16-5B-1 et seq. of this code to obtain a certificate of
96 authorization from the board so long as the hospital does not exercise control of the independent
97 medical judgment of physicians and podiatric physicians licensed pursuant to this article.

98 (m) Court evidence. — A certificate of authorization issued by the board to a corporation to
99 practice medicine and surgery, podiatric medicine, or to perform medical acts through one or more
100 physician ~~assistants~~ associates in this state that has not expired, been revoked, or suspended is

101 admissible in evidence in all courts of this state and is prima facie evidence of the facts stated
102 therein.

103 (n) Penalties. — Any officer, shareholder, or employee of a medical corporation who
104 violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
105 more than \$1,000 per violation.

ARTICLE 3D. PHYSICIAN HEALTH PROGRAMS.

§30-3D-1. Definitions.

1 For the purposes of this article, the following words and terms have the meanings ascribed
2 to them, unless the context clearly indicates otherwise.

3 (1) "Boards" mean the West Virginia Board of Medicine and Board of Osteopathy.

4 (2) "Major mental illness" means a diagnosis of a mental disorder within the axis of
5 psychotic or affective or mood, or alcohol or chemical abuse, or alcohol or chemical dependency,
6 as stipulated in the International Code of Diagnosis.

7 (3) "Physician and physician assistant associate" mean those health care professionals
8 licensed by the West Virginia Board of Medicine or the West Virginia Board of Osteopathy.

9 (4) "Podiatrist" means those individuals licensed by the West Virginia Board of Medicine to
10 undertake the practice of podiatry.

11 (5) "Qualifying illness" means the diagnosis of alcohol or substance abuse or alcohol or
12 substance dependency or major mental illness.

§30-3D-2. Physician health program.

1 (a) The boards are authorized to designate one or more physician health programs. To be
2 eligible for designation by the boards, a physician health program shall:

3 (1) Agree to make their services available to all licensed West Virginia physicians,
4 podiatrists and physicians' ~~assistants~~ associates with a qualifying illness;

5 (2) Provide for the education of physicians, podiatrists and physicians' ~~assistants~~
6 associates with respect to the recognition and treatment of alcohol, chemical dependency and

7 mental illness and the availability of the physician health program for qualifying illnesses;

8 (3) Offer assistance to any person in referring a physician, podiatrist or physicians'
9 ~~assistant~~ associate for purposes of assessment or treatment or both for a qualifying illness;

10 (4) Monitor the status of a physician, podiatrist or physicians' ~~assistant~~ associate who
11 enters treatment for a qualifying illness pursuant to a written, voluntary agreement during
12 treatment;

13 (5) Monitor the compliance of a physician, podiatrist or physicians' ~~assistant~~ associate who
14 enters into a written, voluntary agreement for a qualifying illness with the physician health program
15 setting forth a course for recovery;

16 (6) Agree to accept referrals from the boards to provide monitoring services pursuant to a
17 board order; and

18 (7) Include such other requirements as the boards deem necessary.

19 (b) A designated physician health program shall:

20 (1) Set and collect reasonable fees, grants and donations for administration and services
21 provided;

22 (2) Work collaboratively with the boards to develop model compliance agreements;

23 (3) Work collaboratively with the boards to identify qualified providers of services as may
24 be needed by the individuals participating in the physician health program;

25 (4) Report to the boards no less than annually, statistics including the number of individuals
26 served by license held; the number of compliant individuals; the number of individuals who have
27 successfully completed their agreement period; and the number of individuals reported to a
28 particular board for suspected noncompliance: *Provided*, That in making such report the physician
29 health program shall not disclose any personally identifiable information relating to any physician,
30 podiatrist or physician ~~assistant~~ associate participating in a voluntary agreement as provided
31 herein.

32 (c) The fact that a physician, physician's ~~assistant~~ associate or podiatrist is participating in

33 a designated physician health program is confidential, as is all physicians, podiatrists or
 34 physicians ~~assistants~~ associates patient information, acquired, created or used by the physician
 35 health program, and it shall remain confidential and may not be subject to discovery or subpoena
 36 in a civil case. The disclosure of participation and noncompliance to the appropriate board, as
 37 required by a compliance agreement, waives the confidentiality as to the appropriate board for
 38 disciplinary purposes.

39 (d) The physician health program and all persons engaged in physician health program
 40 activities are immune from civil liability and no civil action may be brought or maintained while the
 41 physician health program and all persons engaged in physician health program activities are
 42 acting in good faith and within the scope of their duties.

43 (e) The boards are immune from civil liability and no civil action may be brought or
 44 maintained against the boards or the state for an injury alleged to have been the result of the
 45 activities of the physician health program or the boards referral of an individual to the physician
 46 health program when they are acting in good faith and within the scope of their duties.

§30-3D-3. Discretionary authority of boards to designate programs.

1 The West Virginia Board of Medicine and the West Virginia Board of Osteopathy have the
 2 sole discretion to designate physician health programs for licensees of the respective boards and
 3 no provision of this article may be construed to entitle any physician, podiatrist or physician
 4 ~~assistant~~ associate to the creation or designation of a physician health program for any individual
 5 qualifying illness or group of qualifying illnesses.

ARTICLE 3E. PHYSICIAN ASSISTANTS ASSOCIATES PRACTICE ACT.

§30-3E-1. Definitions.

1 As used in this article:

2 "Approved program" means an educational program for physician ~~assistants~~ associates
 3 approved and accredited by the Accreditation Review Commission on Education for the Physician
 4 ~~Assistant~~ Associate or its successor. Prior to 2001, approval and accreditation would have been

5 by either the Committee on Allied Health Education and Accreditation or the Commission on
6 Accreditation of Allied Health Education Programs.

7 "Boards" means the West Virginia Board of Medicine and the West Virginia Board of
8 Osteopathic Medicine.

9 "Chronic condition" means a condition which lasts three months or more, generally cannot
10 be prevented by vaccines, can be controlled but not cured by medication, and does not generally
11 disappear. These conditions include, but are not limited to, arthritis, asthma, cardiovascular
12 disease, cancer, diabetes, epilepsy and seizures, and obesity.

13 "Collaborating physician" means a doctor of medicine, osteopathy, or podiatry fully
14 licensed, by the appropriate board in this state, without restriction or limitation, who collaborates
15 with physician ~~assistants~~ associates.

16 "Collaboration" means overseeing the activities of the medical services rendered by a
17 physician ~~assistant~~ associate. Constant physical presence of the collaborating physician is not
18 required as long as the collaborating physician and physician ~~assistant~~ associate are, or can be,
19 easily in contact with one another by telecommunication. Collaboration does not require the
20 personal presence of the collaborating physician at the place or places where services are
21 rendered.

22 "Endorsement" means a summer camp or volunteer endorsement authorized under this
23 article.

24 "Health care facility" means any licensed hospital, nursing home, extended care facility,
25 state health or mental institution, clinic, or physician office.

26 "License" means a license issued by either of the boards pursuant to the provisions of this
27 article.

28 "Licensee" means a person licensed pursuant to the provisions of this article.

29 "Physician" means a doctor of allopathic or osteopathic medicine who is fully licensed
30 pursuant to the provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code to practice

31 medicine and surgery in this state.

32 "Physician assistant associate" means a person who meets the qualifications set forth in
33 this article and is licensed pursuant to this article to practice medicine with a collaborating
34 physician. This term has the same meaning as "physician assistant" or any other title the
35 American Academy of Physician Associates, or its successor association, currently designates for
36 the profession that formerly was referred to as a physician assistant.

37 "Practice notification" means a written notice to the appropriate licensing board that a
38 physician assistant associate will practice in collaboration with one or more collaborating
39 physicians in the state of West Virginia.

§30-3E-2. Powers and duties of the boards.

1 In addition to the powers and duties set forth in this code for the boards, the boards shall:

2 (1) Establish the requirements for licenses and temporary licenses pursuant to this article;

3 (2) Establish the procedures for submitting, approving, and rejecting applications for
4 licenses and temporary licenses;

5 (3) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 et
6 seq. of this code to implement the provisions of this article;

7 (4) Compile and publish an annual report that includes a list of currently licensed physician
8 assistants associates and their primary practice locations in the state; and

9 (5) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-3E-3. Rulemaking.

1 (a) The boards shall propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article, including:

3 (1) The extent to which physician assistants associates may practice in this state;

4 (2) The extent to which physician assistants associates may pronounce death;

5 (3) Requirements for licenses and temporary licenses;

6 (4) Requirements for practice notifications;

- 7 (5) Requirements for continuing education;
- 8 (6) Conduct of a licensee for which discipline may be imposed;
- 9 (7) The eligibility and extent to which a physician ~~assistant~~ associate may prescribe;
- 10 (8) A fee schedule; and
- 11 (9) Any other rules necessary to effectuate the provisions of this article.
- 12 (b) The boards may propose emergency rules pursuant to §29A-3-1 *et seq.* of this code to
- 13 ensure conformity with this article.
- 14 (c) (1) A physician ~~assistant~~ associate may not prescribe a Schedule I controlled
- 15 substance as provided in §60A-2-204 of this code.
- 16 (2) A physician ~~assistant~~ associate may prescribe up to a three-day supply of a Schedule II
- 17 narcotic as provided in §60A-2-206 of this code.
- 18 (3) There are no other limitations on the prescribing authority of a physician ~~assistant~~
- 19 associates, except as provided in §16-54-1 *et seq.* of this code.

§30-3E-4. License to practice as a physician ~~assistant~~ associate.

- 1 (a) A person seeking licensure as a physician ~~assistant~~ associate shall apply to the Board
- 2 of Medicine or to the Board of Osteopathic Medicine. The appropriate board shall issue a license
- 3 to practice as a physician ~~assistant~~ associate with the collaboration of that board's licensed
- 4 physicians or podiatrists.
- 5 (b) A license may be granted to a person who:
- 6 (1) Files a complete application;
- 7 (2) Pays the applicable fees;
- 8 (3) Demonstrates to the board's satisfaction that he or she:
- 9 (A) Obtained a baccalaureate or master's degree from an accredited program of
- 10 instruction for physician ~~assistants~~ associates;
- 11 (B) Prior to July 1, 1994, graduated from an approved program of instruction in primary
- 12 health care or surgery; or

13 (C) Prior to July 1, 1983, was certified by the Board of Medicine as a physician ~~assistant~~
14 associate then classified as Type B;

15 (4) Has passed the Physician ~~Assistant~~Associate National Certifying Examination
16 administered by the National Commission on Certification of Physician ~~Assistants~~ Associates;

17 (5) Has a current certification from the National Commission on Certification of Physician
18 ~~Assistants~~ Associates or has a current license in good standing from a state that does not require
19 a physician ~~assistant~~ associate to maintain national certification;

20 (6) Is mentally and physically able to engage safely in practice as a physician ~~assistant~~
21 associate;

22 (7) Has not had a physician ~~assistant~~ associate license, certification, or registration in any
23 jurisdiction suspended or revoked;

24 (8) Is not currently subject to any limitation, restriction, suspension, revocation, or
25 discipline concerning a physician ~~assistant~~ associate license, certification, or registration in any
26 jurisdiction: *Provided*, That if a board is made aware of any problems with a physician ~~assistant~~
27 associate license, certification, or registration and agrees to issue a license, certification, or
28 registration notwithstanding the provisions of this subdivision or subdivision (7) of this subsection;

29 (9) Is of good moral character; and

30 (10) Has fulfilled any other requirement specified by the appropriate board.

31 (c) A board may deny an application for a physician ~~assistant~~ associate license to any
32 applicant determined to be unqualified by the board.

§30-3E-7. Expired license requirements.

1 (a) If a license automatically expires and reinstatement is sought within one year of the
2 automatic expiration, then an applicant shall submit:

3 (1) A complete reinstatement application;

4 (2) The applicable fees;

5 (3) Proof that he or she has passed Physician ~~Assistant~~ Associate National Certifying

6 Examination; and

7 (4) An attestation that all continuing education requirements have been met.

8 (b) If a license automatically expires and more than one year has passed since the
9 automatic expiration, then an applicant shall apply for a new license.

§30-3E-9. Practice requirements.

1 (a) A physician ~~assistant~~ associate may not practice independent of a collaborating
2 physician.

3 (b) A physician ~~assistant~~ associate may practice in collaboration with physicians in any
4 practice setting pursuant to a practice notification which has been filed with, and activated by, the
5 appropriate board in accordance with §30-3E-10a of this code: *Provided*, That a physician
6 ~~assistant~~ associate who is currently practicing in collaboration with physicians pursuant to a
7 practice agreement which was authorized by a board prior to June 1, 2021, may continue to
8 practice under that authorization until the practice agreement terminates or until June 1, 2022,
9 whichever is sooner.

10 (c) Notwithstanding any other provision of this code to the contrary, and to the degree
11 permitted by federal law, physician ~~assistants~~ associates shall be considered providers and shall
12 not be reimbursed at rates lower than other providers who render similar health services by health
13 insurers as well as health plans operated or paid for by the state.

§30-3E-10a. Practice notification requirements.

1 (a) Before a licensed physician ~~assistant~~ associate may practice in collaboration with
2 physicians, the physician ~~assistant~~ associate and a health care facility shall:

3 (1) File a practice notification with the appropriate licensing board;

4 (2) Pay the applicable fee; and

5 (3) Receive written notice from the appropriate licensing board that the practice notification
6 is complete and active.

7 (b) The licensing boards shall promulgate emergency rules to establish the content and

8 criteria for submission of practice notifications.

9 (c) A physician ~~assistant~~ associate shall notify the board, in writing, within 10 days of the
10 termination of a practice notification. Failure to provide timely notice of the termination constitutes
11 unprofessional conduct and disciplinary proceedings may be instituted by the appropriate
12 licensing board.

§30-3E-11. Collaboration with physician ~~assistants~~ associates.

1 (a) Unless otherwise prohibited by a health care facility, a physician who practices
2 medicine or podiatry at a health care facility may collaborate with any physician ~~assistant~~
3 associate who holds an active practice notification with the same facility.

4 (b) When collaborating with physician ~~assistants~~ associates, collaborating physicians shall
5 observe, direct, and evaluate the physician ~~assistant's~~ associate's work, records, and practices as
6 necessary for appropriate and meaningful collaboration.

7 (c) A health care facility is only legally responsible for the actions or omissions of a
8 physician ~~assistant~~ associate when the physician ~~assistant~~ associate is employed by or on behalf
9 of the facility.

10 (d) Every licensed physician ~~assistant~~ associate shall be individually responsible and liable
11 for the care they provide. This article does not relieve physician ~~assistants~~ associates or
12 collaborating physicians of responsibility and liability which otherwise may exist for acts and
13 omissions occurring during collaboration.

§30-3E-12. Scope of practice.

1 (a) A license issued to a physician assistant associate by the appropriate state licensing
2 board shall authorize the physician ~~assistant~~ associate to perform medical acts commensurate
3 with their education, training, and experience and which they are competent to perform, consistent
4 with the rules of the boards. Medical acts include prescribing, dispensing, and administering of
5 controlled substances, prescription drugs, or medical devices.

6 (b) A physician ~~assistant~~ associate shall provide only those medical services for which they

7 have been prepared by their education, training, and experience and are competent to perform,
 8 consistent with sound medical practice and that will protect the health and safety of the patient.
 9 This may occur in any health care setting, both hospital and outpatient in accordance with their
 10 practice notification.

11 (c) A physician ~~assistant~~ associate with an active practice notification may perform medical
 12 acts and/or procedures in collaboration with physicians which are consistent with the physician
 13 ~~assistant's~~ associate's education, training and experience, the collaborating physician's scope of
 14 practice, and any credentialing requirements of the health care facility where the physician
 15 ~~assistant~~ associate holds an active practice notification.

16 (d) This article does not authorize a physician assistant associate to perform any specific
 17 function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental
 18 hygienists, optometrists, or pharmacists, or certified as nurse anesthetists.

§30-3E-12a. Physician assistant associate signatory authority.

1 (a) A physician ~~assistant~~ associate may provide an authorized signature, certification,
 2 stamp, verification, affidavit or endorsement on documents within the scope of their practice,
 3 including, but not limited to, the following documents:

4 (1) Death certificates: *Provided*, That the physician ~~assistant~~ associate has received
 5 training on the completion of death certificates;

6 (2) "Physician orders for life sustaining treatment", "physician orders for scope of
 7 treatment" and "do not resuscitate" forms;

8 (3) Handicap hunting certificates; and

9 (4) Utility company forms requiring maintenance of utilities regardless of ability to pay.

10 (b) A physician ~~assistant~~ associate may not sign a certificate of merit for a medical
 11 malpractice claim against a physician.

§30-3E-13. Identification.

1 (a) While practicing, a physician ~~assistant~~ associate shall wear a name tag that identifies

2 him or her as a physician ~~assistant~~ associate.

3 (b) A physician ~~assistant~~ associate shall keep his or her license and current practice
4 notification available for inspection at his or her place of practice.

§30-3E-14. Special volunteer physician ~~assistant~~ associate license.

1 (a) A special volunteer physician ~~assistant~~ associate license may be issued to a physician
2 ~~assistant~~ associate who:

3 (1) Is retired or is retiring from the active practice of medicine; and

4 (2) Wishes to donate his or her expertise for the medical care and treatment of indigent and
5 needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of
6 health care services without charge.

7 (b) The special volunteer physician ~~assistant~~ associate license shall be issued by the
8 appropriate licensing board:

9 (1) To a physician ~~assistant~~ associate licensed or otherwise eligible for licensure under this
10 article;

11 (2) Without the payment of any fee; and

12 (3) The initial license shall be issued for the remainder of the licensing period.

13 (c) The special volunteer physician ~~assistant~~ associate license shall be renewed
14 consistent with the appropriate licensing board's other licensing requirements.

15 (d) The appropriate licensing board shall develop application forms for the special
16 volunteer physician ~~assistant~~ associate license which shall contain the physician ~~assistant's~~
17 associate's acknowledgment that:

18 (1) The physician ~~assistant's~~ associate's practice under the special volunteer physician
19 ~~assistant~~ associate license shall be exclusively devoted to providing medical care to needy and
20 indigent persons in West Virginia;

21 (2) The physician ~~assistant~~ associate will not receive any payment or compensation, either
22 direct or indirect, or have the expectation of any payment or compensation, for any medical
23 services rendered under the special volunteer physician ~~assistant~~ associate license;

24 (3) The physician ~~assistant~~ associate shall supply any supporting documentation that the
25 appropriate licensing board may reasonably require; and

26 (4) The physician ~~assistant~~ associate agrees to continue to participate in continuing
27 education as required by the appropriate licensing board for the special volunteer physician
28 ~~assistant~~ associate license.

29 (e) A physician ~~assistant~~ associate and his or her collaborating physician who render
30 medical service to indigent and needy patients of a clinic organized, in whole or in part, for the
31 delivery of health care services without charge, under a special volunteer physician ~~assistant~~
32 associate license, without payment or compensation or the expectation or promise of payment or
33 compensation, are immune from liability for any civil action arising out of any act or omission
34 resulting from the rendering of the medical service at the clinic unless the act or omission was the
35 result of the physician ~~assistant's~~ associate's and his or her collaborating physician's gross
36 negligence or willful misconduct. In order for the immunity under this subsection to apply, there
37 shall be a written agreement between the physician ~~assistant~~ associate and the clinic pursuant to
38 which the physician ~~assistant~~ associate shall provide voluntary uncompensated medical services
39 under the control of the clinic to patients of the clinic before the rendering of any services by the
40 physician ~~assistant~~ associate at the clinic. Any clinic entering into a written agreement is required
41 to maintain liability coverage of not less than \$1 million per occurrence.

42 (f) Notwithstanding the provisions of this section, a clinic organized, in whole or in part, for
43 the delivery of health care services without charge is not relieved from imputed liability for the
44 negligent acts of a physician ~~assistant~~ associate rendering voluntary medical services at or for the
45 clinic under a special volunteer physician ~~assistant~~ associate license.

46 (g) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of
47 all the requirements for licensure under this article, except the fee requirements.

48 (h) Nothing in this section may be construed as requiring the appropriate licensing board to
49 issue a special volunteer physician ~~assistant~~ associate license to any physician ~~assistant~~
50 associate whose license is or has been subject to any disciplinary action or to any physician
51 ~~assistant~~ associate who has surrendered a physician ~~assistant~~ associate license or caused his or
52 her license to lapse, expire and become invalid in lieu of having a complaint initiated or other
53 action taken against his or her license, or who has elected to place a physician ~~assistant~~ associate
54 license in inactive status in lieu of having a complaint initiated or other action taken against his or
55 her license, or who has been denied a physician ~~assistant~~ associate license.

56 (i) Any policy or contract of liability insurance providing coverage for liability sold, issued or
57 delivered in this state to any physician ~~assistant~~ associate covered under the provisions of this
58 article shall be read so as to contain a provision or endorsement whereby the company issuing the
59 policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary
60 thereof, to any claim covered by the terms of the policy within the policy limits, the immunity from
61 liability of the insured by reason of the care and treatment of needy and indigent patients by a
62 physician ~~assistant~~ associate who holds a special volunteer physician ~~assistant~~ associate license.

§30-3E-15. Summer camp or volunteer endorsement — West Virginia licensee.

1 (a) The appropriate licensing board may grant a summer camp or volunteer endorsement
2 to provide services at a children's summer camp or volunteer services for a public or community
3 event to a physician ~~assistant~~ associate who:

4 (1) Is currently licensed by the appropriate licensing board;

5 (2) Has no current discipline, limitations or restrictions on his or her license;

6 (3) Has submitted a timely application; and

7 (4) Attests that:

8 (A) The organizers of the summer camp and public or community event have arranged for

9 a collaborating physician to be available as needed to the physician ~~assistant~~ associate;

10 (B) The physician ~~assistant~~ associate shall limit his or her scope of practice to medical acts
11 which are within his or her education, training and experience; and

12 (C) The physician ~~assistant~~ associate will not prescribe any controlled substances or
13 legend drugs as part of his or her practice at the summer camp or public or community event.

14 (b) A physician ~~assistant~~ associate may only receive one summer camp or volunteer
15 endorsement annually. The endorsement is active for one specifically designated period annually,
16 which period cannot exceed three weeks.

17 (c) A fee cannot be assessed for the endorsement if the physician ~~assistant~~ associate is
18 volunteering his or her services without compensation or remuneration.

§30-3E-16. Summer camp or volunteer endorsement — Out-of-state licensee.

1 (a) The appropriate licensing board may grant a summer camp or volunteer endorsement
2 to provide services at a children's summer camp or volunteer services for a public or community
3 event to a physician ~~assistant~~ associate licensed from another jurisdiction who:

4 (1) Is currently licensed in another jurisdiction and has a current certification from the
5 National Commission on Certification of Physician ~~Assistants~~ Associates;

6 (2) Has no current discipline, limitations or restrictions on his or her license;

7 (3) Has passed the Physician ~~Assistant~~ Associate National Certifying Examination
8 administered by the National Commission on Certification of Physician ~~Assistants~~ Associates;

9 (4) Has submitted a timely application;

10 (5) Has paid the applicable fees; and

11 (6) Attests that:

12 (A) The organizers of the summer camp and public or community event have arranged for
13 a collaborating physician to be available as needed to the physician ~~assistant~~ associate;

14 (B) The physician ~~assistant~~ associate shall limit his or her scope of practice to medical acts
15 which are within his or her education, training and experience; and

16 (C) The physician ~~assistant~~ associate will not prescribe any controlled substances or
17 legend drugs as part of his or her practice at the summer camp or public or community event; and

18 (7) Has fulfilled any other requirements specified by the appropriate board.

19 (b) A physician ~~assistant~~ associate may only receive one summer camp or volunteer
20 endorsement annually. The endorsement is active for one specifically designated period annually,
21 which period cannot exceed three weeks.

§30-3E-17. Complaint process.

1 (a) All hearings and procedures related to denial of a license, and all complaints,
2 investigations, hearings, and procedures regarding a physician ~~assistant~~ associate license and
3 the discipline accorded thereto, shall be in accordance with the processes and procedures set
4 forth in either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, depending on which board licenses
5 the physician ~~assistant~~ associate.

6 (b) The boards may impose the same discipline, restrictions, and/or limitations upon the
7 license of a physician ~~assistant~~ associate as they are authorized to impose upon physicians and/or
8 podiatrists.

9 (c) The boards shall direct to the appropriate licensing board a complaint against a
10 physician ~~assistant~~ associate and/or a collaborating physician.

11 (d) In the event that independent complaint processes are warranted by the boards with
12 respect to the professional conduct of a physician ~~assistant~~ associate or a collaborating physician,
13 the boards are authorized to work cooperatively and to disclose to one another information which
14 may assist the recipient appropriate licensing board in its disciplinary process. The determination
15 of what information, if any, to disclose shall be at the discretion of the disclosing board.

16 (e) A physician ~~assistant~~ associate licensed under this article may not be disciplined for
17 providing expedited partner therapy in accordance with §16-4F-1 *et seq.* of this code.

§30-3E-18. Health care facility reporting requirements.

1 (a) A health care facility shall report, in writing, to the appropriate licensing board within

2 sixty days after the completion of the facility's formal disciplinary procedure or after the
3 commencement and conclusion of any resulting legal action against a licensee.

4 (b) The report shall include:

5 (1) The name of the physician ~~assistant~~ associate practicing in the facility whose privileges
6 at the facility have been revoked, restricted, reduced or terminated for any cause including
7 resignation;

8 (2) All pertinent information relating to the action; and

9 (3) The formal disciplinary action taken against the physician ~~assistant~~ associate by the
10 facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude
11 or drug or alcohol abuse.

12 (c) A health care facility does not need to report temporary suspensions for failure to
13 maintain records on a timely basis or for failure to attend staff or section meetings.

§30-3E-19. Unlawful act and penalty.

1 It is unlawful for any physician ~~assistant~~ associate to represent to any person that he or she
2 is a physician, surgeon or podiatrist. A person who violates this section is guilty of a felony and,
3 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor
4 more than two years, or be fined not more than \$2,000, or both fined and imprisoned.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-3. Board of Osteopathic Medicine.

1 (a) The West Virginia Board of Osteopathy is continued and effective July 1, 2012 shall be
2 known as the West Virginia Board of Osteopathic Medicine. The members of the board shall
3 continue to serve until a successor is appointed and may be reappointed.

4 (b) The Governor shall appoint, by and with advice and consent of the Senate, two
5 additional members and stagger their initial terms:

6 (1) One person who is a licensed osteopathic physician or surgeon; and

7 (2) One person who is a licensed osteopathic physician ~~assistant~~ associate.

8 (c) The board consists of the following seven members, who are appointed to staggered
9 terms by the Governor with the advice and consent of the Senate:

10 (1) Four licensed osteopathic physicians and surgeons;

11 (2) One licensed osteopathic physician assistant associate; and

12 (3) Two citizen members, who are not associated with the practice of osteopathic
13 medicine.

14 (d) After the initial appointment, a board member's term shall be for 5 years.

15 (e) The West Virginia Osteopathic Medical Association may submit recommendations to
16 the Governor for the appointment of an osteopathic physician board member, and the West
17 Virginia Association of Physician ~~Assistants~~ Associates may submit recommendations to the
18 Governor for the appointment of an osteopathic physician assistant associate board member.

19 (f) Each licensed member of the board, at the time of his or her appointment, must have
20 held a license in this state for a period of not less than five years immediately preceding the
21 appointment.

22 (g) Each member of the board must be a U.S. citizen and a resident of this state for a
23 period of not less than five years immediately preceding the appointment and while serving as a
24 member of the board.

25 (h) A member may not serve more than two consecutive full terms. A member having
26 served two consecutive full terms may not be appointed for one year after completion of his or her
27 second full term. A member may continue to serve until a successor has been appointed and has
28 qualified.

29 (i) A vacancy on the board shall be filled by appointment by the Governor for the unexpired
30 term of the member whose office is vacant and the appointment shall be made within sixty days of
31 the vacancy.

32 (j) The Governor may remove any member from the board for neglect of duty,
33 incompetency or official misconduct.

34 (k) A member of the board immediately and automatically forfeits membership to the board
35 if his or her license to practice is suspended or revoked, he or she is convicted of a felony under
36 the laws of any jurisdiction, or he or she becomes a nonresident of this state.

37 (l) The board shall elect annually one of its members as a chairperson and one of its
38 members as a secretary who shall serve at the will of the board.

39 (m) Each member of the board is entitled to compensation and expense reimbursement in
40 accordance with article one of this chapter.

41 (n) A simple majority of the membership serving on the board at a given time constitutes a
42 quorum.

43 (o) The board shall hold at least two meetings each year. Other meetings may be held at
44 the call of the chairperson or upon the written request of two members, at the time and place as
45 designated in the call or request.

46 (p) Prior to commencing his or her duties as a member of the board, each member shall
47 take and subscribe to the oath required by section five, article four of the Constitution of this state.

48 (q) The members of the board when acting in good faith, without malice and within the
49 scope of their duties as board members shall enjoy immunity from individual civil liability.

**§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to
Secretary of State of issuance of certificate; action by secretary of state.**

1 (a) One or more osteopathic physicians, allopathic physicians, or physician ~~assistants~~
2 associates may form an osteopathic medical corporation. An osteopathic physician or osteopathic
3 physician ~~assistant~~ associate shall file a written application with the board on a form prescribed by
4 the board, and shall furnish proof satisfactory to the board that the signer or all of the signers of
5 such application is or are duly licensed. A reasonable fee, to be set by the board rules, shall
6 accompany the application, no part of which shall be returnable.

7 (b) If the board finds that the signer or all of the signers of the application are licensed, the
8 board shall notify the Secretary of State that a certificate of authorization has been issued.

9 (c) When the Secretary of State receives notification from the board that a certain
10 individual or individuals has or have been issued a certificate of authorization, he or she shall
11 attach the authorization to the corporation application and upon compliance by the corporation
12 with §31-1-1 et seq. of this code, the Secretary of State shall notify the incorporators that the
13 corporation may engage in the appropriate practice.

**§30-14-11a. Records of board; expungement; examination; notice; public information;
voluntary agreements relating to alcohol or chemical dependency; confidentiality of
same; physician-patient privileges.**

1 (a) The board shall maintain a permanent record of the names of all osteopathic physicians
2 and osteopathic physician ~~assistants~~ associates, licensed, certified or otherwise lawfully
3 practicing in this state and of all persons applying to be so licensed to practice, along with an
4 individual historical record for each such individual containing reports and all other information
5 furnished the board under this article or otherwise. When the board receives a report submitted
6 pursuant to the provisions of section twelve-a of this article, or when the board receives or initiates
7 a complaint regarding the conduct of anyone practicing osteopathic medicine or surgery, the board
8 shall create a separate complaint file in which the board shall maintain all documents relating to
9 the investigation and action upon the alleged conduct.

10 (b) Upon a determination by the board that any report submitted to it is without merit, the
11 report shall be expunged from the individual's historical record.

12 (c) An osteopathic physician, osteopathic physician ~~assistant~~ associate, or applicant, or
13 authorized representative thereof, has the right, upon request, to examine his or her own individual
14 records maintained by the board pursuant to this article and to place into such record a statement
15 of reasonable length of his or her own view of the correctness or relevance of any information
16 existing in such record. Such statement shall at all times accompany that part of the record in
17 contention.

18 (d) An osteopathic physician, osteopathic physician ~~assistant~~ associate or applicant has

19 the right to seek through court action the amendment or expungement of any part of his or her
20 historical record.

21 (e) An osteopathic physician, osteopathic physician ~~assistant~~ associate or applicant shall
22 be provided written notice within 30 days of the placement and substance of any information in his
23 or her individual historical record that pertains to him or her and that was not submitted to the
24 board by him or her, other than requests for verification of the status of the individual's license and
25 the board's responses thereto.

26 (f) Except for information relating to biographical background, education, professional
27 training and practice, a voluntary agreement entered into pursuant to subsection (h) of this section
28 and which has been disclosed to the board, prior disciplinary action by any entity, or information
29 contained on the licensure application, the board shall expunge information in an individual's
30 complaint file unless it has initiated a proceeding for a hearing upon such information within two
31 years of the placing of the information into the complaint file.

32 (g) Orders of the board relating to disciplinary action against a physician, or physician
33 ~~assistant~~ associate are public information.

34 (h) (1) In order to encourage voluntary participation in monitored alcohol, chemical
35 dependency or major mental illness programs and in recognition of the fact that major mental
36 illness, alcoholism and chemical dependency are illnesses, an osteopathic physician or
37 osteopathic physician ~~assistant~~ associate licensed, certified, or otherwise lawfully practicing in this
38 state or applying for a license to practice in this state may enter into a voluntary agreement with the
39 board-designated physician health program. The agreement between the physician or physician
40 ~~assistant~~ associate and the physician health program shall include a jointly agreed upon treatment
41 program and mandatory conditions and procedures to monitor compliance with the program of
42 recovery.

43 (2) Any voluntary agreement entered into pursuant to this subsection shall not be
44 considered a disciplinary action or order by the board, shall not be disclosed to the board and shall

45 not be public information if:

46 (A) Such voluntary agreement is the result of the physician or physician ~~assistant~~
47 associate self-enrolling or voluntarily participating in the board-designated physician health
48 program;

49 (B) The board has not received nor filed any written complaints regarding said physician or
50 physician ~~assistant~~ associate relating to an alcohol, chemical dependency or major mental illness
51 affecting the care and treatment of patients, nor received any written reports pursuant to
52 subsection (b), section fourteen of this article relating to an alcohol or chemical dependency
53 impairment; and

54 (C) The physician or physician ~~assistant~~ associate is in compliance with the voluntary
55 treatment program and the conditions and procedures to monitor compliance.

56 (3) If any osteopathic physician or osteopathic physician ~~assistant~~ associate enters into a
57 voluntary agreement with the board-approved physician health program, pursuant to this
58 subsection and then fails to comply with, or fulfill the terms of said agreement the physician health
59 program shall report the noncompliance to the board within twenty-four hours. The board may
60 initiate disciplinary proceedings pursuant to section eleven of this article or may permit continued
61 participation in the physician health program or both.

62 (4) If the board has not instituted any disciplinary proceeding as provided in this article, any
63 information received, maintained, or developed by the board relating to the alcohol or chemical
64 dependency impairment of any osteopathic physician or osteopathic physician ~~assistant~~ associate
65 and any voluntary agreement made pursuant to this subsection shall be confidential and not
66 available for public information, discovery or court subpoena, nor for introduction into evidence in
67 any medical professional liability action or other action for damages arising out of the provision of
68 or failure to provide health care services.

69 In the board's annual report of its activities to the Governor and the Legislature required
70 under section twelve, article one of this chapter, the board shall include information regarding the

71 success of the voluntary agreement mechanism established therein: *Provided*, That in making
72 such report the board shall not disclose any personally identifiable information relating to any
73 osteopathic physician or osteopathic physician ~~assistant~~ associate participating in a voluntary
74 agreement as provided herein.

75 Notwithstanding any of the foregoing provisions, the board may cooperate with and
76 provide documentation of any voluntary agreement entered into pursuant to this subsection to
77 licensing boards in other jurisdictions of which the board has become aware and as may be
78 appropriate.

79 (i) Any physician-patient privilege does not apply in any investigation or proceeding by the
80 board or by a medical peer review committee or by a hospital governing board with respect to
81 relevant hospital medical records, while any of the aforesaid are acting within the scope of their
82 authority: *Provided*, That the disclosure of any information pursuant to this provision shall not be
83 considered a waiver of any such privilege in any other proceeding.

§30-14-14. Rulemaking.

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

- 3 (1) Standards and requirements for licenses and permits;
- 4 (2) Procedures for examinations and reexaminations;
- 5 (3) Requirements for third parties to prepare or administer, or both, examinations and
6 reexaminations;
- 7 (4) Educational and experience requirements;
- 8 (5) Standards for approval of courses and curriculum;
- 9 (6) Procedures for the issuance and renewal of licenses and permits;
- 10 (7) A fee schedule;
- 11 (8) Regulation of osteopathic medical corporations;
- 12 (9) Regulation of profession limited liability companies;

- 13 (10) Regulation of osteopathic physician ~~assistants~~ associates;
- 14 (11) Continuing education requirements for licensees;
- 15 (12) The standards for and limitations upon the utilization of telemedicine technologies;
- 16 (13) The procedures for denying, suspending, restricting, revoking, reinstating or limiting
- 17 the practice of licensees and permittees;
- 18 (14) Adopting a standard for ethics;
- 19 (15) Requirements for revoked licenses or permits; and
- 20 (16) Any other rules necessary to effectuate the provisions of this article.
- 21 (b) All of the board's rules in effect and not in conflict with these provisions shall remain in
- 22 effect until they are amended or rescinded.

ARTICLE 36. ACUPUNCTURISTS.

§30-36-10. Qualifications of applicants for licensure; and qualifications for certificate holders.

- 1 (a) To qualify for a license, an applicant shall:
- 2 (1) Be free of a felony conviction bearing a rational nexus to the profession pursuant to
- 3 §30-1-24 of this code;
- 4 (2) Be at least 18 years of age;
- 5 (3) Demonstrate competence in performing acupuncture by meeting one of the following
- 6 standards for education, training, or demonstrated experience:
- 7 (A) Graduation from a course of training of at least 1,800 hours, including 300 clinical
- 8 hours, that is:
- 9 (i) Approved by the national accreditation commission for schools and colleges of
- 10 acupuncture and oriental medicine; or
- 11 (ii) Found by the board to be equivalent to a course approved by the national accreditation
- 12 commission for schools and colleges of acupuncture and oriental medicine;
- 13 (B) Achievement of a passing score on an examination that is:

- 14 (i) Given by the national commission for the certification of acupuncturists; or
- 15 (ii) Determined by the board to be equivalent to the examination given by the national
16 commission for the certification of acupuncturists;
- 17 (C) Successful completion of an apprenticeship consisting of at least 2,700 hours within a
18 five-year period under the direction of an individual properly approved by that jurisdiction to
19 perform acupuncture; or
- 20 (D) Performance of the practice of acupuncture in accordance with the law of another
21 jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior
22 to application that consisted of at least 500 patient visits per year; and
- 23 (4) Achievement of any other qualifications that the board establishes in rules.
- 24 (b) Notwithstanding any other provisions of this code to the contrary, to qualify for a
25 certificate as an auricular detoxification specialist, an applicant shall:
- 26 (1) Be at least 18 years old;
- 27 (2) Be authorized in this state to engage in any of the following:
- 28 (A) Physician ~~assistant~~ associate, pursuant to §30-3E-1 *et seq.* of this code;
- 29 (B) Dentist, pursuant to §30-4-1 *et seq.* of this code;
- 30 (C) Registered professional nurse, pursuant to §30-7-1 *et seq.* of this code;
- 31 (D) Practical nurse, pursuant to §30-7A-1 *et seq.* of this code;
- 32 (E) Psychologist, pursuant to §30-21-1 *et seq.* of this code;
- 33 (F) Occupational therapist, pursuant to §30-28-1 *et seq.* of this code;
- 34 (G) Social worker, pursuant to §30-30-1 *et seq.* of this code;
- 35 (H) Professional counselor, pursuant to §30-31-1 *et seq.* of this code;
- 36 (I) Emergency medical services provider, pursuant to §16-4C-1 *et seq.* of this code;
- 37 (J) Corrections medical providers, pursuant to §15A-1-1 *et seq.* of this code; or
- 38 (K) Any other profession the board determines is eligible to engage in the practice of
39 auricular acudetox.

- 40 (3) Provide evidence of successful completion of a board-approved auricular acudetox
 41 program;
- 42 (4) Submit a completed application as prescribed by the board; and
- 43 (5) Submit the appropriate fees as provided for by legislative rule.
- 44 (c) A certificate may be issued to a retired or inactive professional as described in §30-36-
 45 10(b) of this code: *Provided*, That the professional meets the qualifications for a certificate holder
 46 and the last three years of professional activity were performed in good standing: *Provided*,
 47 *however*, That a person who holds a certificate or its equivalent in another jurisdiction as an
 48 auricular detoxification specialist may be approved by the board to practice auricular acudetox
 49 during a public health emergency or state of emergency for a duration to be provided for in
 50 legislative rules of the board.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-14. Policies discriminating among health care providers.

1 Notwithstanding any other provisions of law, when any health insurance policy, health care
 2 services plan or other contract provides for the payment of medical expenses, benefits or
 3 procedures, such policy, plan or contract shall be construed to include payment to all health care
 4 providers including medical physicians, osteopathic physicians, podiatric physicians, chiropractic
 5 physicians, midwives, physician ~~assistants~~ associates and nurse practitioners who provide
 6 medical services, benefits or procedures which are within the scope of each respective provider's
 7 license. Any limitation or condition placed upon services, diagnoses or treatment by, or payment
 8 to, any particular type of licensed provider shall apply equally to all types of licensed providers
 9 without unfair discrimination as to the usual and customary treatment procedures of any of the
 10 aforesaid providers.

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.

§33-42-3. Definitions.

1 For purposes of this article:

2 (1) "Advanced nurse practitioner" means a certified nurse-midwife, or an advanced nurse
3 practitioner certified to practice in family practice, women's health (ob/gyn), or primary care adult,
4 geriatric or pediatric practice, practicing within the lawful scope of that provider's practice.

5 (2) "Health benefits policy" means any individual or group plan, policy or contract for health
6 care services issued, delivered, issued for delivery or renewed in this state by a health care
7 corporation, health maintenance organization, accident and sickness insurer, fraternal benefit
8 society, nonprofit hospital service corporation, nonprofit medical service corporation or similar
9 entity, when the policy or plan covers hospital, medical or surgical expenses.

10 (3) "Partial-birth abortion" means an abortion in which the person performing the abortion
11 partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

12 (4) "Physician performing a partial-birth abortion" means a doctor of medicine or
13 osteopathy legally authorized to practice medicine and surgery in West Virginia, or any other
14 individual who is legally authorized by the state to perform abortions: *Provided*, That any individual
15 who is not a physician or not otherwise legally authorized by the state to perform abortions, but
16 who nevertheless directly performs a partial-birth abortion, is subject to the provisions of this
17 article.

18 (5) "Vaginally delivers a living fetus before killing the fetus" means deliberately and
19 intentionally delivering into the vagina a living fetus, or a substantial portion thereof, for the
20 purpose of performing a procedure that the physician or person delivering the living fetus knows
21 will kill the fetus, and kills the fetus.

22 (6) "Women's health care provider" means an obstetrician/ gynecologist, advanced nurse
23 practitioner certified to practice in women's health (ob/gyn), certified nurse-midwife or physician
24 ~~assistant~~ associate-midwife practicing within the lawful scope of that provider's practice.

CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.**ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.****§55-7B-2. Definitions.**

1 For the purposes of this article, the following words shall have the meanings ascribed to
2 them in this section unless the context clearly indicates a different meaning:

3 (a) "Board" means the State Board of Risk and Insurance Management.

4 (b) "Collateral source" means a source of benefits or advantages for economic loss that the
5 claimant has received from:

6 (1) Any federal or state act, public program, or insurance which provides payments for
7 medical expenses, disability benefits, including workers' compensation benefits, or other similar
8 benefits. Benefits payable under the Social Security Act and Medicare are not considered
9 payments from collateral sources except for social security disability benefits directly attributable
10 to the medical injury in question;

11 (2) Any contract or agreement of any group, organization, partnership, or corporation to
12 provide, pay for, or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy
13 or other health care services, or provide similar benefits, but excluding any amount that a group,
14 organization, partnership, corporation, or health care provider agrees to reduce, discount, or write
15 off of a medical bill;

16 (3) Any group accident, sickness, or income disability insurance, any casualty or property
17 insurance, including automobile and homeowners' insurance, which provides medical benefits,
18 income replacement, or disability coverage, or any other similar insurance benefits, except life
19 insurance, to the extent that someone other than the insured, including the insured's employer,
20 has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

21 (4) Any contractual or voluntary wage continuation plan provided by an employer or
22 otherwise or any other system intended to provide wages during a period of disability.

23 (c) "Consumer Price Index" means the most recent Consumer Price Index for All
24 Consumers published by the United States Department of Labor.

25 (d) "Emergency condition" means any acute traumatic injury or acute medical condition
26 which, according to standardized criteria for triage, involves a significant risk of death or the
27 precipitation of significant complications or disabilities, impairment of bodily functions or, with
28 respect to a pregnant woman, a significant risk to the health of the unborn child.

29 (e) "Health care" means:

30 (1) Any act, service, or treatment provided under, pursuant to, or in the furtherance of a
31 physician's plan of care, a health care facility's plan of care, medical diagnosis, or treatment;

32 (2) Any act, service, or treatment performed or furnished, or which should have been
33 performed or furnished, by any health care provider or person supervised by or acting under the
34 direction of a health care provider or licensed professional for, to, or on behalf of a patient during
35 the patient's medical care, treatment, or confinement, including, but not limited to, staffing, medical
36 transport, custodial care, or basic care, infection control, positioning, hydration, nutrition, and
37 similar patient services; and

38 (3) The process employed by health care providers and health care facilities for the
39 appointment, employment, contracting, credentialing, privileging, and supervision of health care
40 providers.

41 (f) "Health care facility" means any clinic, hospital, pharmacy, nursing home, assisted living
42 facility, residential care community, end-stage renal disease facility, home health agency, child
43 welfare agency, group residential facility, behavioral health care facility or comprehensive
44 community mental health center, intellectual/developmental disability center or program, or other
45 ambulatory health care facility, in and licensed, regulated, or certified by the State of West Virginia
46 under state or federal law and any state-operated institution or clinic providing health care and any
47 related entity to the health care facility.

48 (g) "Health care provider" means a person, partnership, corporation, professional limited

49 liability company, health care facility, entity, or institution licensed by, or certified in, this state or
50 another state, to provide health care or professional health care services, including, but not limited
51 to, a physician, osteopathic physician, physician ~~assistant~~ associate, advanced practice
52 registered nurse, hospital, health care facility, dentist, registered or licensed practical nurse,
53 optometrist, podiatrist, chiropractor, physical therapist, speech-language pathologist, audiologist,
54 occupational therapist, psychologist, pharmacist, technician, certified nursing assistant,
55 emergency medical service personnel, emergency medical services authority or agency, any
56 person supervised by or acting under the direction of a licensed professional, any person taking
57 actions or providing service or treatment pursuant to or in furtherance of a physician's plan of care,
58 a health care facility's plan of care, medical diagnosis or treatment; or an officer, employee, or
59 agent of a health care provider acting in the course and scope of the officer's, employee's or
60 agent's employment.

61 (h) "Injury" or "Medical injury" means injury or death to a patient arising or resulting from the
62 rendering of or failure to render health care.

63 (i) "Medical professional liability" means any liability for damages resulting from the death
64 or injury of a person for any tort or breach of contract based on health care services rendered, or
65 which should have been rendered, by a health care provider or health care facility to a patient. It
66 also means other claims that may be contemporaneous to or related to the alleged tort or breach of
67 contract or otherwise provided, all in the context of rendering health care services.

68 (j) "Medical professional liability insurance" means a contract of insurance or any
69 actuarially sound self-funding program that pays for the legal liability of a health care facility or
70 health care provider arising from a claim of medical professional liability. In order to qualify as
71 medical professional liability insurance for purposes of this article, a self-funding program for an
72 individual physician must meet the requirements and minimum standards set forth in §55-7B-12 of
73 this code.

74 (k) "Noneconomic loss" means losses, including, but not limited to, pain, suffering, mental

75 anguish, and grief.

76 (l) "Occurrence" means any and all injuries to a patient arising from health care rendered
77 by a health care facility or a health care provider and includes any continuing, additional, or follow-
78 up care provided to that patient for reasons relating to the original health care provided, regardless
79 if the injuries arise during a single date or multiple dates of treatment, single or multiple patient
80 encounters, or a single admission or a series of admissions.

81 (m) "Patient" means a natural person who receives or should have received health care
82 from a licensed health care provider under a contract, expressed or implied.

83 (n) "Plaintiff" means a patient or representative of a patient who brings an action for
84 medical professional liability under this article.

85 (o) "Related entity" means any corporation, foundation, partnership, joint venture,
86 professional limited liability company, limited liability company, trust, affiliate, or other entity under
87 common control or ownership, whether directly or indirectly, partially or completely, legally,
88 beneficially, or constructively, with a health care provider or health care facility; or which owns
89 directly, indirectly, beneficially, or constructively any part of a health care provider or health care
90 facility.

(p) "Representative" means the spouse, parent, guardian, trustee, attorney, or other legal agent of another.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

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

1 (a)(1) The information required by this article to be kept by the Board of Pharmacy is
2 confidential and not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as
3 discovery in civil matters absent a court order and is open to inspection only by inspectors and

4 agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized
5 by the Superintendent of the West Virginia State Police to have access to the information,
6 authorized agents of local law-enforcement agencies as members of a federally affiliated drug task
7 force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents
8 of the Bureau for Medical Services, duly authorized agents of the Office of the Chief Medical
9 Examiner for use in post-mortem examinations, duly authorized agents of the Office of Health
10 Facility Licensure and Certification for use in certification, licensure, and regulation of health
11 facilities, duly authorized agents of licensing boards of practitioners in this state and other states
12 authorized to prescribe Schedules II, III, IV, and V controlled substances, prescribing practitioners
13 and pharmacists, a dean of any medical school or his or her designee located in this state to
14 access prescriber level data to monitor prescribing practices of faculty members, prescribers, and
15 residents enrolled in a degree program at the school where he or she serves as dean, a physician
16 reviewer designated by an employer of medical providers to monitor prescriber level information of
17 prescribing practices of physicians, advance practice registered nurses, or physician ~~assistants~~
18 associates in their employ, and a chief medical officer of a hospital or a physician designated by
19 the chief executive officer of a hospital who does not have a chief medical officer, for prescribers
20 who have admitting privileges to the hospital or prescriber level information, and persons with an
21 enforceable court order or regulatory agency administrative subpoena. All law-enforcement
22 personnel who have access to the Controlled Substances Monitoring Program Database shall be
23 granted access in accordance with applicable state laws and the Board of Pharmacy's rules, shall
24 be certified as a West Virginia law-enforcement officer and shall have successfully completed
25 training approved by the Board of Pharmacy. All information released by the Board of Pharmacy
26 must be related to a specific patient or a specific individual or entity under investigation by any of
27 the above parties except that practitioners who prescribe or dispense controlled substances may
28 request specific data related to their Drug Enforcement Administration controlled substance
29 registration number or for the purpose of providing treatment to a patient: *Provided*, That the West

30 Virginia Controlled Substances Monitoring Program Database Review Committee established in
31 §60A-9-5(b) of this code is authorized to query the database to comply with §60A-9-5(b) of this
32 code.

33 (2) Subject to the provisions of §60A-9-5(a)(1) of this code, the Board of Pharmacy shall
34 also review the West Virginia Controlled Substances Monitoring Program Database and issue
35 reports that identify abnormal or unusual practices of patients and practitioners with prescriptive
36 authority who exceed parameters as determined by the advisory committee established in this
37 section. The Board of Pharmacy shall communicate with practitioners and dispensers to more
38 effectively manage the medications of their patients in the manner recommended by the advisory
39 committee. All other reports produced by the Board of Pharmacy shall be kept confidential. The
40 Board of Pharmacy shall maintain the information required by this article for a period of not less
41 than five years. Notwithstanding any other provisions of this code to the contrary, data obtained
42 under the provisions of this article may be used for compilation of educational, scholarly, or
43 statistical purposes, and may be shared with the West Virginia Department of Health and Human
44 Resources for those purposes, as long as the identities of persons or entities and any personally
45 identifiable information, including protected health information, contained therein shall be
46 redacted, scrubbed, or otherwise irreversibly destroyed in a manner that will preserve the
47 confidential nature of the information. No individual or entity required to report under §60A-9-4 of
48 this code may be subject to a claim for civil damages or other civil relief for the reporting of
49 information to the Board of Pharmacy as required under and in accordance with the provisions of
50 this article.

51 (3) The Board of Pharmacy shall establish an advisory committee to develop, implement,
52 and recommend parameters to be used in identifying abnormal or unusual usage patterns of
53 patients and practitioners with prescriptive authority in this state. This advisory committee shall:

54 (A) Consist of the following members: A physician licensed by the West Virginia Board of
55 Medicine; a dentist licensed by the West Virginia Board of Dental Examiners; a physician licensed

56 by the West Virginia Board of Osteopathic Medicine; a licensed physician certified by the
57 American Board of Pain Medicine; a licensed physician board certified in medical oncology
58 recommended by the West Virginia State Medical Association; a licensed physician board certified
59 in palliative care recommended by the West Virginia Center on End of Life Care; a pharmacist
60 licensed by the West Virginia Board of Pharmacy; a licensed physician member of the West
61 Virginia Academy of Family Physicians; an expert in drug diversion; and such other members as
62 determined by the Board of Pharmacy.

63 (B) Recommend parameters to identify abnormal or unusual usage patterns of controlled
64 substances for patients in order to prepare reports as requested in accordance with §60A-9-
65 5(a)(2) of this code.

66 (C) Make recommendations for training, research, and other areas that are determined by
67 the committee to have the potential to reduce inappropriate use of prescription drugs in this state,
68 including, but not limited to, studying issues related to diversion of controlled substances used for
69 the management of opioid addiction.

70 (D) Monitor the ability of medical services providers, health care facilities, pharmacists,
71 and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances
72 Monitoring Program set forth in §60A-9-3 of this code, and report on the feasibility of requiring real-
73 time reporting.

74 (E) Establish outreach programs with local law enforcement to provide education to local
75 law enforcement on the requirements and use of the Controlled Substances Monitoring Program
76 Database established in this article.

77 (b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring
78 Program Database Review Committee of individuals consisting of two prosecuting attorneys from
79 West Virginia counties, two physicians with specialties which require extensive use of controlled
80 substances and a pharmacist who is trained in the use and abuse of controlled substances. The
81 review committee may determine that an additional physician who is an expert in the field under

82 investigation be added to the team when the facts of a case indicate that the additional expertise is
83 required. The review committee, working independently, may query the database based on
84 parameters established by the advisory committee. The review committee may make
85 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns
86 indicated by outliers in the system or abnormal or unusual usage patterns of controlled substances
87 by patients which the review committee has reasonable cause to believe necessitates further
88 action by law enforcement or the licensing board having jurisdiction over the practitioners or
89 dispensers under consideration. The licensing board having jurisdiction over the practitioner or
90 dispenser under consideration shall report back to the Board of Pharmacy regarding any findings,
91 investigation, or discipline resulting from the findings of the review committee within 30 days of
92 resolution of any action taken by the licensing board resulting from the information provided by the
93 Board of Pharmacy. The review committee shall also review notices provided by the chief medical
94 examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis whether a
95 practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the
96 drug overdose may have breached professional or occupational standards or committed a
97 criminal act when prescribing the controlled substance at issue to the decedent. Only in those
98 cases in which there is reasonable cause to believe a breach of professional or occupational
99 standards or a criminal act may have occurred, the review committee shall notify the appropriate
100 professional licensing agency having jurisdiction over the applicable practitioner or dispenser and
101 appropriate law-enforcement agencies and provide pertinent information from the database for
102 their consideration. The number of cases identified shall be determined by the review committee
103 based on a number that can be adequately reviewed by the review committee. The information
104 obtained and developed may not be shared except as provided in this article and is not subject to
105 the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovering in civil matters absent
106 a court order.

107 (c) The Board of Pharmacy is responsible for establishing and providing administrative

108 support for the advisory committee and the West Virginia Controlled Substances Monitoring
109 Program Database Review Committee. The advisory committee and the review committee shall
110 elect a chair by majority vote. Members of the advisory committee and the review committee may
111 not be compensated in their capacity as members but shall be reimbursed for reasonable
112 expenses incurred in the performance of their duties.

113 (d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory
114 committee, after consultation with the licensing boards set forth in §60A-9-5(d)(4) of this code and
115 in accordance with the provisions of §29A-3-1 *et seq.* of this code. The legislative rules must
116 include, but shall not be limited to, the following matters:

117 (1) Identifying parameters used in identifying abnormal or unusual prescribing or
118 dispensing patterns;

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

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

123 (4) Dissemination of these reports at least quarterly to:

124 (A) The West Virginia Board of Medicine codified in §30-3-1 *et seq.* of this code;

125 (B) The West Virginia Board of Osteopathic Medicine codified in §30-14-1 *et seq.* of this
126 code;

127 (C) The West Virginia Board of Examiners for Registered Professional Nurses codified in
128 §30-7-1 *et seq.* of this code;

129 (D) The West Virginia Board of Dentistry codified in §30-4-1 *et seq.* of this code; and

130 (E) The West Virginia Board of Optometry codified in §30-8-1 *et seq.* of this code; and

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

134 (e) Persons or entities with access to the West Virginia Controlled Substances Monitoring
135 Program Database pursuant to this section may, pursuant to rules promulgated by the Board of
136 Pharmacy, delegate appropriate personnel to have access to said database.

137 (f) Good faith reliance by a practitioner on information contained in the West Virginia
138 Controlled Substances Monitoring Program Database in prescribing or dispensing or refusing or
139 declining to prescribe or dispense a Schedule II, III, IV, or V controlled substance shall constitute
140 an absolute defense in any civil or criminal action brought due to prescribing or dispensing or
141 refusing or declining to prescribe or dispense.

142 (g) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in
143 the prescribing or dispensing practitioner's judgment, may be in violation of §60A-4-410 of this
144 code, based on information obtained and reviewed from the Controlled Substances Monitoring
145 Program Database. A prescribing or dispensing practitioner who makes a notification pursuant to
146 this subsection is immune from any civil, administrative, or criminal liability that otherwise might be
147 incurred or imposed because of the notification if the notification is made in good faith.

148 (h) Nothing in the article may be construed to require a practitioner to access the West
149 Virginia Controlled Substances Monitoring Program Database except as provided in §60A-9-5 of
150 this code.

151 (i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled
152 Substances Monitoring Program to the Legislative Oversight Commission on Health and Human
153 Resources Accountability with recommendations for needed legislation no later than January 1 of
154 each year

CHAPTER 60B. DONATED DRUG REPOSITORY PROGRAM.

ARTICLE 1. DONATED DRUG REPOSITORY PROGRAM.

§60B-1-1. Definitions.

1 As used in this chapter:

2 "Board" means the West Virginia Board of Pharmacy.

3 "Controlled substance" means a drug, substance, or immediate precursor in Schedules I
4 through V of §60A-2-1 *et seq.* of this code, and Schedules I through V of 21 CFR Part 1308.

5 "Donor" means any person, including an individual member of the public, or any entity
6 legally authorized to possess drugs with a license or permit in good standing in the state in which it
7 is located, including, but not limited to, a wholesaler or distributor, third party logistic provider,
8 pharmacy, dispenser, clinic, surgical or health center, detention and rehabilitation center,
9 laboratory, medical or pharmacy school, prescriber or other health care professional, or healthcare
10 facility. Donor also means government agencies and entities that are federally authorized to
11 possess drugs including, but not limited to, drug manufacturers, repackagers, relabelers,
12 outsourcing facilities, Veteran Affairs hospitals, and prisons.

13 "Drugs" means both prescription and nonprescription ("over-the-counter") drugs.

14 "Eligible patient" means an indigent person. However, if the recipient's supply of donated
15 drugs exceeds the need for donated drugs by indigent patients, then any other person in need of a
16 particular drug can be an eligible patient.

17 "Eligible recipient" means a pharmacy, wholesaler, reverse distributor, hospital, federally
18 qualified health center, nonprofit clinic, healthcare facility, an entity participating in a drug donation
19 or repository program pursuant to another state's law, or private office of a healthcare professional
20 that has been authorized by the West Virginia Board of Pharmacy.

21 "Healthcare facility" means a facility licensed by the State of West Virginia as a:

- 22 (1) Nursing home;
- 23 (2) Personal care home;
- 24 (3) Assisted living community;
- 25 (4) Residential care facility for the elderly;
- 26 (5) Hospice;
- 27 (6) Hospital;

28 (7) Home health agency; or

29 (8) A similar entity licensed in the state in which it is located.

30 "Health care professional" means a person who is licensed by the State of West Virginia to
31 practice as a:

32 (1) Physician;

33 (2) Registered nurse or licensed practical nurse;

34 (3) Physician ~~assistant~~ associate;

35 (4) Dentist or dental hygienist;

36 (5) Optometrist; or

37 (6) Pharmacist

38 "Indigent patient" means a patient whose income is at or below the income eligibility
39 requirements of the West Virginia Medicaid program, or who is uninsured, underinsured, or
40 enrolled in a public assistance health benefits program.

41 "Program" means the donated drug repository program established by rule pursuant to
42 §60B-1-8 of this code.

43 "Transaction date" means the date on which ownership of the drugs is transferred between
44 two participants of the program as established by contract or other arrangement. If no such
45 contract or arrangement exists, the transaction date shall be the date the drug was accepted into
46 inventory by the recipient.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental representatives, health care providers, utility workers, law-enforcement officers, correctional employees and emergency medical service personnel; definitions; penalties.

1 (a) For purposes of this section:

2 (1) "Government representative" means any officer or employee of the state or a political
3 subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

4 (2) "Health care worker" means any nurse, nurse practitioner, physician, physician
5 ~~assistant~~ associate or technician practicing at, and all persons employed by or under contract to a
6 hospital, county or district health department, long-term care facility, physician's office, clinic or
7 outpatient treatment facility.

8 (3) "Emergency service personnel" means any paid or volunteer firefighter, emergency
9 medical technician, paramedic, or other emergency services personnel employed by or under
10 contract with an emergency medical service provider or a state agency or political subdivision
11 thereof.

12 (4) "Utility worker" means any individual employed by a public utility or electric cooperative
13 or under contract to a public utility, electric cooperative or interstate pipeline.

14 (5) "Law-enforcement officer" has the same definition as this term is defined in W.Va. Code
15 §30-29-1, except for purposes of this section, "law-enforcement officer" shall additionally include
16 those individuals defined as "chief executive" in W.Va. Code §30-29-1.

17 (6) "Correctional employee" means any individual employed by the West Virginia Division
18 of Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division of Juvenile
19 Services and an employee of an entity providing services to incarcerated, detained or housed
20 persons pursuant to a contract with such agencies.

21 (b) *Malicious assault*. — Any person who maliciously shoots, stabs, cuts or wounds or by
22 any means causes bodily injury with intent to maim, disfigure, disable or kill a government
23 representative, health care worker, utility worker, emergency service personnel, correctional
24 employee or law-enforcement officer acting in his or her official capacity, and the person
25 committing the malicious assault knows or has reason to know that the victim is acting in his or her
26 official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional

27 facility for not less than three nor more than 15 years.

28 (c) *Unlawful assault.* — Any person who unlawfully but not maliciously shoots, stabs, cuts
29 or wounds or by any means causes a government representative, health care worker, utility
30 worker, emergency service personnel, correctional employee or law-enforcement officer acting in
31 his or her official capacity bodily injury with intent to maim, disfigure, disable or kill him or her and
32 the person committing the unlawful assault knows or has reason to know that the victim is acting in
33 his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a
34 correctional facility for not less than two nor more than five years.

35 (d) *Battery.* — Any person who unlawfully, knowingly and intentionally makes physical
36 contact of an insulting or provoking nature with a government representative, health care worker,
37 utility worker, emergency service personnel, correctional employee or law-enforcement officer
38 acting in his or her official capacity and the person committing the battery knows or has reason to
39 know that the victim is acting in his or her official capacity, or unlawfully and intentionally causes
40 physical harm to that person acting in such capacity and the person committing the battery knows
41 or has reason to know that the victim is acting in his or her official capacity, is guilty of a
42 misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail
43 not less than one month nor more than 12 months or both fined and confined. If any person
44 commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall
45 be fined not more than \$1,000 or imprisoned in a state correctional facility not less than one year
46 nor more than three years, or both fined and imprisoned. Any person who commits a third violation
47 of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than
48 \$2,000 or imprisoned in a state correctional facility not less than two years nor more than five
49 years, or both fined and imprisoned.

50 (e) *Assault.* — Any person who unlawfully attempts to commit a violent injury to the person
51 of a government representative, health care worker, utility worker, emergency service personnel,
52 correctional employee or law-enforcement officer, acting in his or her official capacity and the

53 person committing the battery knows or has reason to know that the victim is acting in his or her
54 official capacity, or unlawfully commits an act which places that person acting in his or her official
55 capacity in reasonable apprehension of immediately receiving a violent injury and the person
56 committing the battery knows or has reason to know that the victim is acting in his or her official
57 capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not
58 less than 24 hours nor more than six months, fined not more than \$200, or both fined and confined.

59 (f) Any person convicted of any crime set forth in this section who is incarcerated in a
60 facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail
61 Authority, or is in the custody of the Division of Juvenile Services and is at least eighteen years of
62 age or subject to prosecution as an adult, at the time of committing the offense and whose victim is
63 a correctional employee may not be sentenced in a manner by which the sentence would run
64 concurrent with any other sentence being served at the time the offense giving rise to the
65 conviction of a crime set forth in this section was committed.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-7. Medical examiners.

1 (a) The chief medical examiner shall appoint for each county in the state a county medical
2 examiner to serve for a term of three years under the supervision of the chief medical examiner. A
3 county medical examiner shall be medically trained and licensed by the State of West Virginia as a
4 physician, registered nurse, paramedic, emergency medical technician or a physician ~~assistant~~
5 associate, be certified in the practice of medicolegal death investigation. County medical
6 examiners are authorized to establish the fact of death, and to make investigations into all deaths
7 in their respective counties that come within the provisions of §61-2-8 and §61-2-10 of this code
8 and shall in timely fashion record findings of an investigation using forms prescribed by the chief
9 medical examiner. A county medical examiner may be removed from office for cause at any time
10 by the chief medical examiner. Any vacancy in the office of county medical examiner shall be filled
11 by the chief medical examiner. One person may be appointed to serve as county medical

12 examiner for more than one county, and a county medical examiner need not be a resident of the
13 county which he or she serves. If the chief medical examiner determines that it is necessary, he or
14 she may appoint any person medically trained and licensed by the State of West Virginia as a
15 physician, registered nurse, paramedic, emergency medical technician or a physician assistant
16 associate to act as an assistant county medical examiner for a term of three years. An assistant
17 shall have the same powers and duties as a county medical examiner and shall perform his or her
18 duties under the supervision of the chief medical examiner.

19 (b) A county medical examiner or his or her assistant county medical examiner shall, at all
20 times, be available to perform the duties required under this article. He or she shall, additionally, be
21 paid a fee, as determined by the chief medical examiner, but only for the actual performance of his
22 or her duties.

23 (c) County medical examiners and assistant county medical examiners are authorized to
24 determine the cause and manner of death in any case falling within the provisions of section eight
25 of this article, subject to the supervision of the chief medical examiner, and may exercise any of the
26 powers attendant to the investigation of deaths.

CHAPTER 64. LEGISLATIVE RULES.

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-11. West Virginia Massage Therapy Licensure Board.

1 The legislative rule filed in the State Register on July 30, 2021, authorized under the
2 authority of §30-37-6 of this code, modified by the West Virginia Massage Therapy Licensure
3 Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the
4 State Register on September 1, 2021, relating to the West Virginia Massage Therapy Licensure
5 Board (General Provisions, 194 CSR 01), is authorized with the amendment set forth below:

6 On page 4, subdivision 4.1.h, after the words "written medical directive" by inserting the

7 words "prescribed by a medical doctor, doctor of osteopathy, physician ~~assistant~~ associate, or an
8 advanced practice registered nurse".

§64-9-13. West Virginia Board of Medicine.

1 (a) The legislative rule filed in the State Register on July 30, 2021, authorized under the
2 authority of §30-3-7 of this code, relating to the West Virginia Board of Medicine (Licensing and
3 Disciplinary Procedures: Physicians, Podiatric Physicians and Surgeons, 11 CSR 01A), is
4 authorized.

5 (b) The legislative rule filed in the State Register on July 30, 2021, authorized under the
6 authority of §30-3E-3 of this code, modified by the West Virginia Board of Medicine to meet the
7 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
8 November 2, 2021, relating to the West Virginia Board of Medicine (Licensure, Practice
9 Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician
10 Assistants, 11 CSR 01B), is authorized.

11 (c) The legislative rule filed in the State Register on July 30, 2021, authorized under the
12 authority of §30-3-7 of this code, modified by the West Virginia Board of Medicine to meet the
13 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
14 October 25, 2021, relating to the West Virginia Board of Medicine (Dispensing of Prescription
15 Drugs by Practitioners, 11 CSR 05), is authorized.

16 (d) The legislative rule filed in the State Register on July 30, 2021, authorized under the
17 authority of §30-3-7 of this code, relating to the West Virginia Board of Medicine (Continuing
18 Education for Physicians and Podiatric Physicians, 11 CSR 06), is authorized.

19 (e) The legislative rule filed in the State Register on July 30, 2021, authorized under the
20 authority of §60A-9-5a of this code, modified by the West Virginia Board of Medicine to meet the
21 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
22 October 25, 2021, relating to the West Virginia Board of Medicine (Practitioner Requirements for
23 Accessing the West Virginia Controlled Substances Monitoring Program Database, 11 CSR 10), is

24 authorized.

25 (f) The legislative rule filed in the State Register on July 30, 2021, authorized under the
26 authority of §30-3-7 of this code, modified by the Board of Medicine to meet the objections of the
27 Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2021,
28 relating to the West Virginia Board of Medicine (Establishment and Regulation of Limited License
29 to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities, 11 CSR 11),
30 is authorized.

31 (g) The legislative rule filed in the State Register on July 30, 2021, authorized under the
32 authority of §30-3E-3 of this code, modified by the West Virginia Board of Medicine to meet the
33 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
34 October 25, 2021, relating to the West Virginia Board of Medicine (Registration to Practice During
35 Declared State of Emergency, 11 CSR 14), is authorized.

36 (h) The legislative rule filed in the State Register on July 30, 2021, authorized under the
37 authority of §30-3-7 of this code, modified by the Board of Medicine to meet the objections of the
38 Legislative Rule-Making Review Committee and refiled in the State Register on December 16,
39 2021, relating to the Board of Medicine (Telehealth and Interstate Telehealth Registration for
40 Physicians, Podiatric Physicians and Physician Assistants, 11 CSR 15), is authorized with the
41 amendment set forth below:

42 On page seven, by striking out all of subsection 7.4 and inserting in lieu thereof a new
43 subsection 7.4 to read as follows:

44 7.4 Nothing in this rule requires a practitioner to use telemedicine technologies to treat a
45 patient if the practitioner, in his or her discretion, determines that an in-person encounter is
46 required.;

47 And,

48 On page nine, subsection 8.4, by striking out the words "based solely upon a telemedicine
49 encounter".

§64-9-14. West Virginia Board of Osteopathic Medicine.

1 (a) The legislative rule filed in the State Register on July 30, 2021, authorized under the
2 authority of §30-14-14 of this code, modified by the West Virginia Board of Osteopathic Medicine
3 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
4 Register on September 24, 2021, relating to the West Virginia Board of Osteopathic Medicine
5 (Licensing Procedures for Osteopathic Physicians, 24 CSR 01), is authorized.

6 (b) The legislative rule filed in the State Register on July 30, 2021, authorized under the
7 authority of §30-3E-3 of this code, modified by the West Virginia Board of Osteopathic Medicine to
8 meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
9 Register on September 29, 2021, relating to the West Virginia Board of Osteopathic Medicine
10 (Osteopathic Physician Assistants, 24 CSR 02), is authorized.

11 (c) The legislative rule filed in the State Register on July 30, 2021, authorized under the
12 authority of §60A-9-5a of this code, modified by the West Virginia Board of Osteopathic Medicine
13 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
14 Register on September 24, 2021, relating to the West Virginia Board of Osteopathic Medicine
15 (Practitioner Requirements for Controlled Substances Licensure and Accessing the West Virginia
16 Controlled Substances Monitoring Program Database, 24 CSR 07), is authorized.

17 (d) The legislative rule filed in the State Register on July 30, 2021, authorized under the
18 authority of §30-14-14 of this code, modified by the Board of Osteopathic Medicine to meet the
19 objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
20 December 15, 2021, relating to the Board of Osteopathic Medicine (Telehealth Practice and
21 Interstate Telehealth Registration for Osteopathic Physicians and Physician Assistants, 24 CSR
22 10), is authorized with the amendment set forth below:

23 On page seven, by striking out all of subsection 7.4 and inserting in lieu thereof a new
24 subsection 7.4 to read as follows:

25 7.4 Nothing in this rule requires a practitioner to use telemedicine technologies to treat a

26 patient if the practitioner, in his or her discretion, determines that an in-person encounter is
27 required.;

28 And,

29 On page nine, subsection 8.4, by striking out the words "based solely upon a telemedicine
30 encounter".

NOTE: The purpose of this bill is to change code references to "physician assistant" to "physician associate." It defines physician associate to be synonymous with any other term that the American Academy of Physician Associates designates as the proper name of the profession formerly known as physician assistant. The bill also corrects one definition of physician associate by establishing that the physician associate is required to have a collaborative relationship with a physician, as opposed to the physician supervising the physician associate, which conforms with the rest of the code.

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