

SB 1004

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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2010

ENROLLED

Senate Bill No. 1004

(BY SENATOR TOMBLIN (MR. PRESIDENT),
BY REQUEST OF THE EXECUTIVE)

[Passed May 14, 2010; in effect ninety days from passage.]

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 1004

(BY SENATOR TOMBLIN (MR. PRESIDENT),

BY REQUEST OF THE EXECUTIVE)

[Passed May 14, 2010; in effect ninety days from passage.]

AN ACT to repeal §27-1A-12 of the Code of West Virginia, 1931, as amended; to repeal §27-2-1a and §27-2-1b of said code; to amend and reenact §9-4C-1 and §9-4C-5 of said code; to amend and reenact §9-5-11c of said code; to amend and reenact §11-27-10 and §11-27-11 of said code; to amend and reenact §16-1-4 of said code; to amend and reenact §16-2D-2 and §16-2D-5 of said code; to amend and reenact §16-5F-2 of said code; to amend and reenact §16-5O-2 of said code; to amend and reenact §16-22-1 and §16-22-2 of said code; to amend and reenact §16-29A-3 of said code; to amend and reenact §16-30-7 and §16-30-24 of said code; to amend and reenact §27-1-3, §27-1-6, §27-1-7 and §27-1-9 of said code; to amend and reenact §27-1A-1, §27-1A-4 and §27-1A-6 of said code; to amend and reenact §27-2-1 of said code; to amend and reenact §27-2A-1 of said code; to amend and reenact §27-5-9 of said code; to amend and

reenact §27-9-1 of said code; to amend and reenact §27-12-1 of said code; to amend and reenact §29-15-1, §29-15-5 and §29-15-6 of said code; to amend and reenact §44A-1-1 and §44A-1-2 of said code; and to amend and reenact §49-4A-6 of said code, all relating to intellectually disabled persons; revising nomenclature in favor of the term "intellectual disability"; renaming facilities, operations and references accordingly; removing antiquated code sections; revising definitions; providing that previous terminology will control in certain situations; and updating certain statutory provisions to reflect prior changes occurring elsewhere in the code.

Be it enacted by the Legislature of West Virginia:

That §27-1A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §27-2-1a and §27-2-1b of said code be repealed; that §9-4C-1 and §9-4C-5 of said code be amended and reenacted; that §9-5-11c of said code be amended and reenacted; that §11-27-10 and §11-27-11 of said code be amended and reenacted; that §16-1-4 of said code be amended and reenacted; that §16-2D-2 and §16-2D-5 of said code be amended and reenacted; that §16-5F-2 of said code be amended and reenacted; that §16-5O-2 of said code be amended and reenacted; that §16-22-1 and §16-22-2 of said code be amended and reenacted; that §16-29A-3 of said code be amended and reenacted; that §16-30-7 and §16-30-24 of said code be amended and reenacted; that §27-1-3, §27-1-6, §27-1-7 and §27-1-9 of said code be amended and reenacted; that §27-1A-1, §27-1A-4 and §27-1A-6 of said code be amended and reenacted; that §27-2-1 of said code be amended and reenacted; that §27-2A-1 of said code be amended and reenacted; that §27-5-9 of said code be amended and reenacted; that §27-9-1 of said code be amended and reenacted; that §27-12-1 of said code be amended and reenacted; that §29-15-1, §29-15-5 and §29-15-6 of said code be amended and reenacted; that §44A-1-1 and §44A-1-2 of said code be amended and reenacted; and that §49-4A-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 9. HUMAN SERVICES.**ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.****§9-4C-1. Definitions.**

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

5 (a) "Ambulance service provider" means a person
6 rendering ambulance services within this state and
7 receiving reimbursement, directly as an individual pro-
8 vider or indirectly as an employee or agent of a medical
9 clinic, partnership or other business entity.

10 (b) "General health care provider" means an audiologist,
11 a behavioral health center, a chiropractor, a community
12 care center, an independent laboratory, an independent X
13 ray service, an occupational therapist, an optician, an
14 optometrist, a physical therapist, a podiatrist, a private
15 duty nurse, a psychologist, a rehabilitative specialist, a
16 respiratory therapist and a speech therapist rendering
17 services within this state and receiving reimbursement,
18 directly as an individual provider or indirectly as an
19 employee or agent of a medical clinic, partnership or other
20 business entity.

21 (c) "Inpatient hospital services provider" means a
22 provider of inpatient hospital services for purposes of
23 Section 1903(w) of the Social Security Act.

24 (d) "Intermediate care facility for individuals with an
25 intellectual disability services provider" means a provider
26 of intermediate care facility services for individuals with
27 an intellectual disability for purposes of Section 1903(w)
28 of the Social Security Act.

29 (e) "Nursing facility services provider" means a provider
30 of nursing facility services for purposes of Section 1903(w)
31 of the Social Security Act.

32 (f) "Outpatient hospital service provider" means a
33 hospital providing preventative, diagnostic, therapeutic,
34 rehabilitative or palliative services that are furnished to
35 outpatients.

36 (g) "Secretary" means the Secretary of the Department
37 of Health and Human Resources.

38 (h) "Single state agency" means the single state agency
39 for Medicaid in this state.

§9-4C-5. Facility providers' Medicaid enhancement board.

1 (a) The outpatient hospital Medicaid enhancement board
2 created by this section shall cease to exist on the effective
3 date of this article.

4 (b) There is hereby continued the facility providers'
5 Medicaid enhancement board to consist of seven members.
6 In order to carry out the purpose of this article, the board
7 shall represent ambulatory surgical centers, inpatient
8 hospital service providers, outpatient hospital service
9 providers, nursing facility service providers and interme-
10 diate care facility for individuals with an intellectual
11 disability service providers.

12 (c) The board shall consist of one representative from
13 each of the aforementioned classes of health care provid-
14 ers, one lay person and the secretary, or his or her
15 designee, who shall serve as an ex officio, nonvoting
16 member. The Governor shall make all appointments
17 within thirty days after the effective date of this article.

18 (d) After initial appointment of the board, any appoint-
19 ment to fill a vacancy shall be for the unexpired term only,
20 shall be made in the same manner as the initial appoint-

21 ment, and the terms of all members shall expire on July 1,
22 1996.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11c. Right of the Department of Health and Human Resources to recover medical assistance.

1 (a) Upon the death of a person who was fifty-five years
2 of age or older at the time the person received welfare
3 assistance consisting of nursing facility services, home and
4 community-based services, and related hospital and
5 prescription drug services, the Department of Health and
6 Human Resources, in addition to any other available
7 remedy, may file a claim or lien against the estate of the
8 recipient for the total amount of medical assistance
9 provided by Medicaid for nursing facility services, home
10 and community-based services, and related hospital and
11 prescription drug services provided for the benefit of the
12 recipient. Claims so filed shall be classified as and
13 included in the class of debts due the state.

14 (b) The department may recover pursuant to subsection
15 (a) only after the death of the individual's surviving
16 spouse, if any and only after such time as the individual
17 has no surviving children under the age of twenty-one, or
18 when the individual has no surviving children who meet
19 the Social Security Act's definition of blindness or perma-
20 nent and total disability.

21 (c) The state shall have the right to place a lien upon the
22 property of individuals who are inpatients in a nursing
23 facility, intermediate care facility for individuals with an
24 intellectual disability or other medical institution who,
25 after notice and an opportunity for a hearing, the state has
26 deemed to be permanently institutionalized. This lien
27 shall be in an amount equal to Medicaid expenditures for
28 services provided by a nursing facility, intermediate care
29 facility for individuals with an intellectual disability or

30 other medical institution, and shall be rendered against
31 the proceeds of the sale of property except for a minimal
32 amount reserved for the individual's personal needs. Any
33 such lien dissolves upon that individual's discharge from
34 the medical institution. The secretary has authority to
35 compromise or otherwise reduce the amount of this lien in
36 cases where enforcement would create a hardship.

37 (d) No lien may be imposed on such individual's home
38 when the home is the lawful residence of: (1) The spouse of
39 the individual; (2) the individual's child who is under the
40 age of twenty-one; (3) the individual's child meets the
41 Social Security Act's definition of blindness or permanent
42 and total disability; or (4) the individual's sibling has an
43 equity interest in the home and was residing in the home
44 for a period of at least one year immediately before the
45 date of the individual's admission to a medical institution.

46 (e) The filing of a claim, pursuant to this section, neither
47 reduces or diminishes the general claims of the Depart-
48 ment of Health and Human Resources, except that the
49 department may not receive double recovery for the same
50 expenditure. The death of the recipient neither extin-
51 guishes or diminishes any right of the department to
52 recover. Nothing in this section affects or prevents a
53 proceeding to enforce a lien pursuant to this section or a
54 proceeding to set aside a fraudulent conveyance.

55 (f) Any claim or lien imposed pursuant to this section is
56 effective for the full amount of medical assistance pro-
57 vided by Medicaid for nursing facility services, home and
58 community-based services, and related hospital and
59 prescription drug services. The lien attaches and is
60 perfected automatically as of the beginning date of
61 medical assistance, the date when a recipient first receives
62 treatment for which the Department of Health and Human
63 Resources may be obligated to provide medical assistance.
64 A claim may be waived by the department, if the depart-

65 ment determines, pursuant to applicable federal law and
66 rules and regulations, that the claim will cause substantial
67 hardship to the surviving dependents of the deceased.

68 (g) Upon the effective date of this section, the Attorney
69 General, on behalf of the State of West Virginia, shall
70 commence an action in a court of competent jurisdiction
71 to test the validity, constitutionality, and the ability of the
72 Congress of the United States to mandate the implementa-
73 tion of this section. This subsection does not limit the
74 right of others, including recipients, to intervene in any
75 litigation, nor does it limit the discretion of the Attorney
76 General or appropriate counsel to seek affected persons to
77 act as parties to the litigation, either individually or as a
78 class.

CHAPTER 11. TAXATION.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-10. Imposition of tax on providers of intermediate care facility services for individuals with an intellectual disability.

1 (a) *Imposition of tax.* – For the privilege of engaging or
2 continuing within this state in the business of providing
3 intermediate care facility services for individuals with an
4 intellectual disability, there is levied and shall be collected
5 from every person rendering such service an annual
6 broad-based health care related tax.

7 (b) *Rate and measure of tax.* – The tax imposed in
8 subsection (a) of this section is five and one-half percent
9 of the gross receipts derived by the taxpayer from furnish-
10 ing intermediate care facility services in this state to
11 individuals with an intellectual disability.

12 (c) *Definitions.* –

13 (1) “Gross receipts” means the amount received or
14 receivable, whether in cash or in kind, from patients,

15 third-party payors and others for intermediate care
16 facility services furnished by the provider, including
17 retroactive adjustments under reimbursement agreements
18 with third-party payors, without any deduction for any
19 expenses of any kind: *Provided*, That accrual basis provid-
20 ers are allowed to reduce gross receipts by their contrac-
21 tual allowances, to the extent those allowances are
22 included therein, and by bad debts, to the extent the
23 amount of those bad debts was previously included in
24 gross receipts upon which the tax imposed by this section
25 was paid.

26 (2) "Contractual allowances" means the difference
27 between revenue (gross receipts) at established rates and
28 amounts realizable from third-party payors under con-
29 tractual agreements.

30 (3) "Intermediate care facility services for individuals
31 with an intellectual disability" means those services that
32 are intermediate care facility services for individuals with
33 an intellectual disability for purposes of Section 1903(w)
34 of the Social Security Act.

35 (d) *Effective date*. – The tax imposed by this section
36 applies to gross receipts received or receivable by provid-
37 ers after May 31, 1993.

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

1 (a) *Imposition of tax*. – For the privilege of engaging or
2 continuing within this state in the business of providing
3 nursing facility services, other than those services of
4 intermediate care facilities for individuals with an intel-
5 lectual disability, there is levied and shall be collected
6 from every person rendering such service an annual
7 broad-based health care related tax: *Provided*, That

8 hospitals which provide nursing facility services may
9 adjust nursing facility rates to the extent necessary to
10 compensate for the tax without first obtaining approval
11 from the health care authority: *Provided, however, That*
12 the rate adjustment is limited to a single adjustment
13 during the initial year of the imposition of the tax which
14 adjustment is exempt from prospective review by the
15 health care authority and further which is limited to an
16 amount not to exceed the amount of the tax which is
17 levied against the hospital for the provision of nursing
18 facility services pursuant to this section. The health care
19 authority shall retroactively review the rate increases
20 implemented by the hospitals under this section during the
21 regular rate review process. A hospital which fails to meet
22 the criteria established by this section for a rate increase
23 exempt from prospective review is subject to the penalties
24 imposed under article twenty-nine-b, chapter sixteen of
25 the code.

26 (b) *Rate and measure of tax.* – The tax imposed in
27 subsection (a) of this section is five and one-half percent
28 of the gross receipts derived by the taxpayer from furnish-
29 ing nursing facility services in this state, other than
30 services of intermediate care facilities for individuals with
31 an intellectual disability. This rate shall be increased to
32 five and ninety-five one hundredths percent of the gross
33 receipts received or receivable by providers of nursing
34 facility services after June 30, 2004, and shall again be
35 decreased to five and one-half percent of the gross
36 receipts received or receivable by providers of nursing
37 services after October 31, 2007.

38 (c) *Definitions.* –

39 (1) “Gross receipts” means the amount received or
40 receivable, whether in cash or in kind, from patients,
41 third-party payors and others for nursing facility services
42 furnished by the provider, including retroactive adjust-

43 ments under reimbursement agreements with third-party
44 payors, without any deduction for any expenses of any
45 kind: *Provided*, That accrual basis providers are allowed
46 to reduce gross receipts by their bad debts, to the extent
47 the amount of those bad debts was previously included in
48 gross receipts upon which the tax imposed by this section
49 was paid.

50 (2) "Nursing facility services" means those services that
51 are nursing facility services for purposes of Section
52 1903(w) of the Social Security Act.

53 (d) *Effective date*. – The tax imposed by this section
54 applies to gross receipts received or receivable by provid-
55 ers after May 31, 1993.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules in accordance with the
2 provisions of article three, chapter twenty-nine-a of this
3 code that are necessary and proper to effectuate the
4 purposes of this chapter. The secretary may appoint or
5 designate advisory councils of professionals in the areas of
6 hospitals, nursing homes, barbers and beauticians, post-
7 mortem examinations, mental health and intellectual
8 disability centers and any other areas necessary to advise
9 the secretary on rules.

10 The rules may include, but are not limited to, the
11 regulation of:

12 (a) Land usage endangering the public health: *Provided*,
13 That no rules may be promulgated or enforced restricting
14 the subdivision or development of any parcel of land
15 within which the individual tracts, lots or parcels exceed
16 two acres each in total surface area and which individual

17 tracts, lots or parcels have an average frontage of not less
18 than one hundred fifty feet even though the total surface
19 area of the tract, lot or parcel equals or exceeds two acres
20 in total surface area, and which tracts are sold, leased or
21 utilized only as single-family dwelling units. Notwith-
22 standing the provisions of this subsection, nothing in this
23 section may be construed to abate the authority of the
24 department to: (1) Restrict the subdivision or development
25 of a tract for any more intense or higher density occupancy
26 than a single-family dwelling unit; (2) propose or enforce
27 rules applicable to single-family dwelling units for
28 single-family dwelling unit sanitary sewerage disposal
29 systems; or (3) restrict any subdivision or development
30 which might endanger the public health, the sanitary
31 condition of streams or sources of water supply;

32 (b) The sanitary condition of all institutions and schools,
33 whether public or private, public conveyances, dairies,
34 slaughterhouses, workshops, factories, labor camps, all
35 other places open to the general public and inviting public
36 patronage or public assembly, or tendering to the public
37 any item for human consumption and places where trades
38 or industries are conducted;

39 (c) Occupational and industrial health hazards, the
40 sanitary conditions of streams, sources of water supply,
41 sewerage facilities and plumbing systems and the qualifi-
42 cations of personnel connected with any of those facilities,
43 without regard to whether the supplies or systems are
44 publicly or privately owned; and the design of all water
45 systems, plumbing systems, sewerage systems, sewage
46 treatment plants, excreta disposal methods and swimming
47 pools in this state, whether publicly or privately owned;

48 (d) Safe drinking water, including:

49 (1) The maximum contaminant levels to which all public
50 water systems must conform in order to prevent adverse
51 effects on the health of individuals and, if appropriate,

52 treatment techniques that reduce the contaminant or
53 contaminants to a level which will not adversely affect the
54 health of the consumer. The rule shall contain provisions
55 to protect and prevent contamination of wellheads and
56 well fields used by public water supplies so that contami-
57 nants do not reach a level that would adversely affect the
58 health of the consumer;

59 (2) The minimum requirements for: Sampling and
60 testing; system operation; public notification by a public
61 water system on being granted a variance or exemption or
62 upon failure to comply with specific requirements of this
63 section and rules promulgated under this section; record
64 keeping; laboratory certification; as well as procedures
65 and conditions for granting variances and exemptions to
66 public water systems from state public water systems
67 rules; and

68 (3) The requirements covering the production and
69 distribution of bottled drinking water and may establish
70 requirements governing the taste, odor, appearance and
71 other consumer acceptability parameters of drinking
72 water;

73 (e) Food and drug standards, including cleanliness,
74 proscription of additives, proscription of sale and other
75 requirements in accordance with article seven of this
76 chapter as are necessary to protect the health of the
77 citizens of this state;

78 (f) The training and examination requirements for
79 emergency medical service attendants and emergency
80 medical care technician-paramedics; the designation of the
81 health care facilities, health care services and the indus-
82 tries and occupations in the state that must have emer-
83 gency medical service attendants and emergency medical
84 care technician-paramedics employed and the availability,
85 communications and equipment requirements with respect
86 to emergency medical service attendants and to emergency

87 medical care technician-paramedics: *Provided*, That any
88 regulation of emergency medical service attendants and
89 emergency medical care technician-paramedics may not
90 exceed the provisions of article four-c of this chapter;

91 (g) The health and sanitary conditions of establishments
92 commonly referred to as bed and breakfast inns. For
93 purposes of this article, "bed and breakfast inn" means an
94 establishment providing sleeping accommodations and, at
95 a minimum, a breakfast for a fee: *Provided*, That the
96 secretary may not require an owner of a bed and breakfast
97 providing sleeping accommodations of six or fewer rooms
98 to install a restaurant-style or commercial food service
99 facility: *Provided, however*, That the secretary may not
100 require an owner of a bed and breakfast providing sleep-
101 ing accommodations of more than six rooms to install a
102 restaurant-type or commercial food service facility if the
103 entire bed and breakfast inn or those rooms numbering
104 above six are used on an aggregate of two weeks or less
105 per year;

106 (h) Fees for services provided by the Bureau for Public
107 Health including, but not limited to, laboratory service
108 fees, environmental health service fees, health facility fees
109 and permit fees;

110 (i) The collection of data on health status, the health
111 system and the costs of health care;

112 (j) Opioid treatment programs duly licensed and operat-
113 ing under the requirements of chapter twenty-seven of this
114 code. The health care authority shall develop new certifi-
115 cate of need standards, pursuant to the provisions of
116 article two-d of this chapter, that are specific for opioid
117 treatment program facilities. No applications for a
118 certificate of need for opioid treatment programs shall be
119 approved by the health care authority as of the effective
120 date of the 2007 amendments to this subsection. The
121 secretary shall promulgate revised emergency rules to

122 govern licensed programs: *Provided*, That there is a
123 moratorium on the licensure of new opioid treatment
124 programs that do not have a certificate of need as of the
125 effective date of the 2007 amendments to this subsection,
126 which shall continue until the Legislature determines that
127 there is a necessity for additional opioid treatment facili-
128 ties in West Virginia. The secretary shall file revised
129 emergency rules with the Secretary of State to regulate
130 opioid programs in compliance with subsections (1)
131 through (9), inclusive, of this section: *Provided, however*,
132 That any opioid treatment program facility that has
133 received a certificate of need pursuant to article two-d, of
134 this chapter by the health care authority shall be permit-
135 ted to proceed to license and operate the facility. All
136 existing opioid treatment programs shall be in compliance
137 within one hundred eighty days of the effective date of the
138 revised emergency rules as required herein. The revised
139 emergency rules shall provide at a minimum:

140 (1) That the initial assessment prior to admission for
141 entry into the opioid treatment program shall include an
142 initial drug test to determine whether an individual is
143 either opioid addicted or presently receiving methadone
144 for an opioid addiction from another opioid treatment
145 program. The patient may be admitted to the program if
146 there is a positive test for either opioids or methadone or
147 there are objective symptoms of withdrawal, or both, and
148 all other criteria set forth in the rule for admission into an
149 opioid treatment program are met: *Provided*, That admis-
150 sion to the program may be allowed to the following
151 groups with a high risk of relapse without the necessity of
152 a positive test or the presence of objective symptoms:
153 Pregnant women with a history of opioid abuse, prisoners
154 or parolees recently released from correctional facilities,
155 former clinic patients who have successfully completed
156 treatment but who believe themselves to be at risk of
157 imminent relapse and HIV patients with a history of
158 intravenous drug use.

159 (2) That within seven days of the admission of a patient,
160 the opioid treatment program shall complete an initial
161 assessment and an initial plan of care. Subsequently, the
162 opioid treatment program shall develop a treatment plan
163 of care by the thirtieth day after admission and attach to
164 the patient's chart no later than five days after such plan
165 is developed. The treatment plan is to reflect that detoxi-
166 fication is an option for treatment and supported by the
167 program.

168 (3) That each opioid treatment program shall report and
169 provide statistics to the Department of Health and Human
170 Resources at least semiannually which includes the total
171 number of patients; the number of patients who have been
172 continually receiving methadone treatment in excess of
173 two years, including the total number of months of
174 treatment for each such patient; the state residency of each
175 patient; the number of patients discharged from the
176 program, including the total months in the treatment
177 program prior to discharge and whether the discharge was
178 for:

179 (A) Termination or disqualification;

180 (B) Completion of a program of detoxification;

181 (C) Voluntary withdrawal prior to completion of all
182 requirements of detoxification as determined by the opioid
183 treatment program; or

184 (D) An unexplained reason.

185 (4) That random drug testing of patients be conducted
186 during the course of treatment. For purposes of these
187 rules, random drug testing shall mean that each patient of
188 an opioid treatment program facility has a statistically
189 equal chance of being selected for testing at random and
190 at unscheduled times. Any refusal to participate in a
191 random drug test shall be considered a positive test:

192 *Provided*, That nothing contained in this section or the
193 legislative rules promulgated in conformity herewith will
194 preclude any opioid treatment program from administer-
195 ing such additional drug tests as determined necessary by
196 the opioid treatment program.

197 (5) That all random drug tests conducted by an opioid
198 treatment program shall, at a minimum, test for the
199 following:

200 (A) Opiates, including oxycodone at common levels of
201 dosing;

202 (B) Methadone and any other medication used by the
203 program as an intervention;

204 (C) Benzodiazepine including diazepam, lorazepam,
205 clonazepam and alprazolam;

206 (D) Cocaine;

207 (E) Methamphetamine or amphetamine; and

208 (F) Other drugs determined by community standards,
209 regional variation or clinical indication.

210 A positive test is a test that results in the presence of any
211 drug or substance listed in this schedule and any other
212 drug or substance prohibited by the opioid treatment
213 program;

214 (6) That a positive drug test result after the first six
215 months in an opioid treatment program shall result in the
216 following:

217 (A) Upon the first positive drug test result, the opioid
218 treatment program shall:

219 (1) Provide mandatory and documented weekly counsel-
220 ing to the patient, which shall include weekly meetings
221 with a counselor who is licensed, certified or enrolled in

222 the process of obtaining licensure or certification in
223 compliance with the rules and on staff at the opioid
224 treatment program;

225 (2) Immediately revoke the take home methadone
226 privilege for a minimum of thirty days; and

227 (B) Upon a second positive drug test result within six
228 months of a previous positive drug test result, the opioid
229 treatment program shall:

230 (1) Provide mandatory and documented weekly counsel-
231 ing, which shall include weekly meetings with a counselor
232 who is licensed, certified or enrolled in the process of
233 obtaining licensure or certification in compliance with the
234 rules and on staff at the opioid treatment program;

235 (2) Immediately revoke the take-home methadone
236 privilege for a minimum of sixty days; and

237 (3) Provide mandatory documented treatment team
238 meetings with the patient.

239 (C) Upon a third positive drug test result within a period
240 of six months the opioid treatment program shall:

241 (1) Provide mandatory and documented weekly counsel-
242 ing, which shall include weekly meetings with a counselor
243 who is licensed, certified or enrolled in the process of
244 obtaining licensure or certification in compliance with the
245 rules and on staff at the opioid treatment program;

246 (2) Immediately revoke the take-home methadone
247 privilege for a minimum of one hundred twenty days; and

248 (3) Provide mandatory and documented treatment team
249 meetings with the patient which will include, at a mini-
250 mum: The need for continuing treatment; a discussion of
251 other treatment alternatives; and the execution of a
252 contract with the patient advising the patient of discharge
253 for continued positive drug tests.

254 (D) Upon a fourth positive drug test within a six-month
255 period, the patient shall be immediately discharged from
256 the opioid treatment program or, at the option of the
257 patient, shall immediately be provided the opportunity to
258 participate in a twenty-one day detoxification plan,
259 followed by immediate discharge from the opioid treat-
260 ment program.

261 (7) That the opioid treatment program must report and
262 provide statistics to the Department of Health and Human
263 Resources demonstrating compliance with the random
264 drug test rules including confirmation that:

265 (A) The random drug tests were truly random in regard
266 to both the patients tested and to the times random drug
267 tests were administered by lottery or some other objective
268 standard so as not to prejudice or protect any particular
269 patient.

270 (B) The total number and the number of positive results;
271 and

272 (C) The number of expulsions from the program.

273 (8) That all opioid treatment facilities be open for
274 business seven days per week: *Provided*, That the opioid
275 treatment center may be closed for eight holidays and two
276 training days per year.

277 (9) That the Office of Health Facility Licensure and
278 Certification develop policies and procedures in conjunc-
279 tion with the Board of Pharmacy that will allow access to
280 the Prescription Drug Registry maintained by the Board of
281 Pharmacy before administration of methadone or other
282 treatment in an opioid treatment program, after any
283 positive drug test, and at each ninety-day treatment
284 review to ensure the patient is not seeking prescription
285 medication from multiple sources.

286 (k) The secretary shall propose a rule for legislative
287 approval in accordance with the provisions of article
288 three, chapter twenty-nine-a of this code for the distribu-
289 tion of state aid to local health departments and basic
290 public health services funds.

291 (1) The rule shall include the following provisions:

292 (A) Base allocation amount for each county;

293 (B) Establishment and administration of an emergency
294 fund of no more than two percent of the total annual funds
295 of which unused amounts are to be distributed back to
296 local boards of health at the end of each fiscal year;

297 (C) A calculation of funds utilized for state support of
298 local health departments;

299 (D) Distribution of remaining funds on a per capita
300 weighted population approach which factors coefficients
301 for poverty, health status, population density and health
302 department interventions for each county and a coefficient
303 which encourages counties to merge in the provision of
304 public health services;

305 (E) A hold-harmless provision to provide that each local
306 health department receives no less in state support for a
307 period of three years beginning in the 2009 budget year.

308 (2) The Legislature finds that an emergency exists and,
309 therefore, the secretary shall file an emergency rule to
310 implement the provisions of this section pursuant to the
311 provisions of section fifteen, article three, chapter
312 twenty-nine-a of this code. The emergency rule is subject
313 to the prior approval of the Legislative Oversight Commis-
314 sion on Health and Human Resources Accountability prior
315 to filing with the Secretary of State.

316 (l) Other health-related matters which the department is
317 authorized to supervise and for which the rule-making
318 authority has not been otherwise assigned.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-f
2 and twenty-nine-b of this chapter are incorporated in this
3 section unless this section has different definitions.

4 As used in this article, unless otherwise indicated by the
5 context:

6 (a) "Affected person" means:

7 (1) The applicant;

8 (2) An agency or organization representing consumers;

9 (3) Any individual residing within the geographic area
10 served or to be served by the applicant;

11 (4) Any individual who regularly uses the health care
12 facilities within that geographic area;

13 (5) The health care facilities which provide services
14 similar to the services of the facility under review and
15 which will be significantly affected by the proposed
16 project;

17 (6) The health care facilities which, before receipt by the
18 state agency of the proposal being reviewed, have formally
19 indicated an intention to provide similar services in the
20 future;

21 (7) Third-party payors who reimburse health care
22 facilities similar to those proposed for services;

23 (8) Any agency that establishes rates for health care
24 facilities similar to those proposed; or

25 (9) Organizations representing health care providers.

26 (b) "Ambulatory health care facility" means a
27 free-standing facility that provides health care to

28 noninstitutionalized and nonhomebound persons on an
29 outpatient basis. For purposes of this definition, a
30 free-standing facility is not located on the campus of an
31 existing health care facility. This definition does not
32 include any facility engaged solely in the provision of
33 lithotripsy services or the private office practice of any
34 one or more health professionals licensed to practice in
35 this state pursuant to the provisions of chapter thirty of
36 this code: *Provided*, That this exemption from review
37 may not be construed to include practices where major
38 medical equipment otherwise subject to review under the
39 provisions of this article is acquired, offered or developed:
40 *Provided, however*, That this exemption from review
41 may not be construed to include certain health services
42 otherwise subject to review under the provisions of
43 subdivision (1), subsection (a), section four of this article.

44 (c) “Ambulatory surgical facility” means a free-standing
45 facility that provides surgical treatment to patients not
46 requiring hospitalization. For purposes of this definition,
47 a free-standing facility is not physically attached to a
48 health care facility. This definition does not include the
49 private office practice of any one or more health profes-
50 sionals licensed to practice surgery in this state pursuant
51 to the provisions of chapter thirty of this code: *Provided*,
52 That this exemption from review may not be construed to
53 include practices where major medical equipment other-
54 wise subject to review under the provisions of this article
55 is acquired, offered or developed: *Provided, however*, That
56 this exemption from review may not be construed to
57 include health services otherwise subject to review under
58 the provisions of subdivision (1), subsection (a), section
59 four of this article.

60 (d) “Applicant” means: (1) The governing body or the
61 person proposing a new institutional health service who is,
62 or will be, the health care facility licensee wherein the new
63 institutional health service is proposed to be located; and

64 (2) in the case of a proposed new institutional health
65 service not to be located in a licensed health care facility,
66 the governing body or the person proposing to provide the
67 new institutional health service. Incorporators or promot-
68 ers who will not constitute the governing body or persons
69 responsible for the new institutional health service may
70 not be an applicant.

71 (e) "Bed capacity" means the number of beds licensed to
72 a health care facility or the number of adult and pediatric
73 beds permanently staffed and maintained for immediate
74 use by inpatients in patient rooms or wards in an unli-
75 censed facility.

76 (f) "Campus" means the adjacent grounds and buildings,
77 or grounds and buildings not separated by more than a
78 public right-of-way, of a health care facility.

79 (g) "Capital expenditure" means:

80 (1) An expenditure made by or on behalf of a health care
81 facility, which:

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

87 (B) (i) Exceeds the expenditure minimum; or (ii) is a
88 substantial change to the bed capacity of the facility with
89 respect to which the expenditure is made; or (iii) is a
90 substantial change to the services of such facility;

91 (2) The donation of equipment or facilities to a health
92 care facility, which if acquired directly by that facility
93 would be subject to review;

94 (3) The transfer of equipment or facilities for less than
95 fair market value if the transfer of the equipment or

96 facilities at fair market value would be subject to review;
97 or

98 (4) A series of expenditures, if the sum total exceeds the
99 expenditure minimum and if determined by the state
100 agency to be a single capital expenditure subject to review.
101 In making this determination, the state agency shall
102 consider: Whether the expenditures are for components of
103 a system which is required to accomplish a single purpose;
104 whether the expenditures are to be made over a two-year
105 period and are directed towards the accomplishment of a
106 single goal within the health care facility's long-range
107 plan; or whether the expenditures are to be made within a
108 two-year period within a single department such that they
109 will constitute a significant modernization of the depart-
110 ment.

111 (h) "Expenditure minimum" means \$2,700,000 for the
112 calendar year 2009. The state agency shall adjust the
113 expenditure minimum annually and publish an update of
114 the amount on or before December 31 of each year. The
115 expenditure minimum adjustment shall be based on the
116 DRI inflation index published in the *Global Insight*
117 *DRI/WEFA Health Care Cost Review*, or its successor or
118 appropriate replacement index. This amount shall include
119 the cost of any studies, surveys, designs, plans, working
120 drawings, specifications and other activities, including
121 staff effort and consulting and other services essential to
122 the acquisition, improvement, expansion or replacement
123 of any plant or equipment.

124 (i) "Health", used as a term, includes physical and
125 mental health.

126 (j) "Health care facility" means a publicly or privately
127 owned facility, agency or entity that offers or provides
128 health care services, whether a for-profit or nonprofit
129 entity and whether or not licensed, or required to be
130 licensed, in whole or in part, and includes, but is not

131 limited to, hospitals; skilled nursing facilities; kidney
132 disease treatment centers, including free-standing
133 hemodialysis units; intermediate care facilities; ambula-
134 tory health care facilities; ambulatory surgical facilities;
135 home health agencies; hospice agencies; rehabilitation
136 facilities; health maintenance organizations; and commu-
137 nity mental health and intellectual disability facilities.
138 For purposes of this definition, "community mental health
139 and intellectual disability facility" means a private facility
140 which provides such comprehensive services and continu-
141 ity of care as emergency, outpatient, partial hospitaliza-
142 tion, inpatient or consultation and education for individu-
143 als with mental illness, intellectual disability or drug or
144 alcohol addiction.

145 (k) "Health care provider" means a person, partnership,
146 corporation, facility, hospital or institution licensed or
147 certified or authorized by law to provide professional
148 health care service in this state to an individual during
149 that individual's medical, remedial or behavioral health
150 care, treatment or confinement.

151 (l) "Health maintenance organization" means a public or
152 private organization which:

153 (1) Is required to have a certificate of authority to
154 operate in this state pursuant to section three, article
155 twenty-five-a, chapter thirty-three of this code; or

156 (2) (A) Provides or otherwise makes available to enrolled
157 participants health care services, including substantially
158 the following basic health care services: Usual physician
159 services, hospitalization, laboratory, X ray, emergency and
160 preventive services and out-of-area coverage;

161 (B) Is compensated except for copayments for the
162 provision of the basic health care services listed in para-
163 graph (A) of this subdivision to enrolled participants on a
164 predetermined periodic rate basis without regard to the

165 date the health care services are provided and which is
166 fixed without regard to the frequency, extent or kind of
167 health service actually provided; and

168 (C) Provides physicians' services: (i) Directly through
169 physicians who are either employees or partners of the
170 organization; or (ii) through arrangements with individual
171 physicians or one or more groups of physicians organized
172 on a group practice or individual practice basis.

173 (m) "Health services" means clinically related preven-
174 tive, diagnostic, treatment or rehabilitative services,
175 including alcohol, drug abuse and mental health services.

176 (n) "Home health agency" means an organization
177 primarily engaged in providing professional nursing
178 services either directly or through contract arrangements
179 and at least one of the following services: Home health
180 aide services, other therapeutic services, physical therapy,
181 speech therapy, occupational therapy, nutritional services
182 or medical social services to persons in their place of
183 residence on a part-time or intermittent basis.

184 (o) "Hospice agency" means a private or public agency
185 or organization licensed in West Virginia for the adminis-
186 tration or provision of hospice care services to terminally
187 ill persons in the persons' temporary or permanent resi-
188 dences by using an interdisciplinary team, including, at a
189 minimum, persons qualified to perform nursing services;
190 social work services; the general practice of medicine or
191 osteopathy; and pastoral or spiritual counseling.

192 (p) "Hospital" means a facility licensed as such pursuant
193 to the provisions of article five-b of this chapter, and any
194 acute care facility operated by the state government, that
195 primarily provides inpatient diagnostic, treatment or
196 rehabilitative services to injured, disabled or sick persons
197 under the supervision of physicians and includes psychiat-
198 ric and tuberculosis hospitals.

199 (q) "Intermediate care facility" means an institution that
200 provides health-related services to individuals with mental
201 or physical conditions that require services above the level
202 of room and board, but do not require the degree of
203 services provided in a hospital or skilled-nursing facility.

204 (r) "Long-range plan" means a document formally
205 adopted by the legally constituted governing body of an
206 existing health care facility or by a person proposing a
207 new institutional health service which contains the
208 information required by the state agency in rules adopted
209 pursuant to section eight of this article.

210 (s) "Major medical equipment" means a single unit of
211 medical equipment or a single system of components with
212 related functions which is used for the provision of
213 medical and other health services and costs in excess of
214 \$2,700,000 in the calendar year 2009. The state agency
215 shall adjust the dollar amount specified in this subsection
216 annually and publish an update of the amount on or before
217 December 31 of each year. The adjustment of the dollar
218 amount shall be based on the DRI inflation index pub-
219 lished in the *Global Insight DRI/WEFA Health Care Cost*
220 *Review* or its successor or appropriate replacement index.
221 This term does not include medical equipment acquired by
222 or on behalf of a clinical laboratory to provide clinical
223 laboratory services if the clinical laboratory is independ-
224 ent of a physician's office and a hospital and it has been
225 determined under Title XVIII of the Social Security Act to
226 meet the requirements of paragraphs ten and eleven,
227 Section 1861(s) of such act, Title 42 U.S.C. §1395x. In
228 determining whether medical equipment is major medical
229 equipment, the cost of studies, surveys, designs, plans,
230 working drawings, specifications and other activities
231 essential to the acquisition of such equipment shall be
232 included. If the equipment is acquired for less than fair
233 market value, the term "cost" includes the fair market
234 value.

235 (t) "Medically underserved population" means the
236 population of an area designated by the state agency as
237 having a shortage of personal health services. The state
238 agency may consider unusual local conditions that are a
239 barrier to accessibility or availability of health services.
240 The designation shall be in rules adopted by the state
241 agency pursuant to section eight of this article, and the
242 population so designated may include the state's medically
243 underserved population designated by the federal Secre-
244 tary of Health and Human Services under Section
245 330(b)(3) of the Public Health Service Act, as amended,
246 Title 42 U.S.C. §254.

247 (u) "New institutional health service" means any service
248 as described in section three of this article.

249 (v) "Nonhealth-related project" means a capital expen-
250 diture for the benefit of patients, visitors, staff or employ-
251 ees of a health care facility and not directly related to
252 preventive, diagnostic, treatment or rehabilitative services
253 offered by the health care facility. This includes, but is
254 not limited to, chapels, gift shops, news stands, computer
255 and information technology systems, educational, confer-
256 ence and meeting facilities, but excluding medical school
257 facilities, student housing, dining areas, administration
258 and volunteer offices, modernization of structural compo-
259 nents, boiler repair or replacement, vehicle maintenance
260 and storage facilities, parking facilities, mechanical
261 systems for heating, ventilation systems, air conditioning
262 systems and loading docks.

263 (w) "Offer", when used in connection with health
264 services, means that the health care facility or health
265 maintenance organization holds itself out as capable of
266 providing, or as having the means to provide, specified
267 health services.

268 (x) "Person" means an individual, trust, estate, partner-
269 ship, committee, corporation, association and other

270 organizations such as joint-stock companies and insurance
271 companies, a state or a political subdivision or instrumen-
272 tality thereof or any legal entity recognized by the state.

273 (y) "Physician" means a doctor of medicine or osteopa-
274 thy legally authorized to practice by the state.

275 (z) "Proposed new institutional health service" means
276 any service as described in section three of this article.

277 (aa) "Psychiatric hospital" means an institution that
278 primarily provides to inpatients, by or under the supervi-
279 sion of a physician, specialized services for the diagnosis,
280 treatment and rehabilitation of mentally ill and emotion-
281 ally disturbed persons.

282 (bb) "Rehabilitation facility" means an inpatient facility
283 operated for the primary purpose of assisting in the
284 rehabilitation of disabled persons through an integrated
285 program of medical and other services which are provided
286 under competent professional supervision.

287 (cc) "Review agency" means an agency of the state,
288 designated by the Governor as the agency for the review of
289 state agency decisions.

290 (dd) "Skilled nursing facility" means an institution, or
291 a distinct part of an institution, that primarily provides
292 inpatient skilled nursing care and related services, or
293 rehabilitation services, to injured, disabled or sick persons.

294 (ee) "State agency" means the Health Care Authority
295 created, established and continued pursuant to article
296 twenty-nine-b of this chapter.

297 (ff) "State health plan" means the document approved
298 by the Governor after preparation by the former statewide
299 health coordinating council or that document as approved
300 by the Governor after amendment by the former health
301 care planning council or the state agency.

302 (gg) “Substantial change to the bed capacity” of a health
303 care facility means any change, associated with a capital
304 expenditure, that increases or decreases the bed capacity
305 or relocates beds from one physical facility or site to
306 another, but does not include a change by which a health
307 care facility reassigns existing beds as swing beds between
308 acute care and long-term care categories: *Provided*, That
309 a decrease in bed capacity in response to federal rural
310 health initiatives is excluded from this definition.

311 (hh) “Substantial change to the health services” of a
312 health care facility means: (1) The addition of a health
313 service offered by or on behalf of the health care facility
314 which was not offered by or on behalf of the facility
315 within the twelve-month period before the month in which
316 the service is first offered; or (2) the termination of a
317 health service offered by or on behalf of the facility:
318 *Provided*, That “substantial change to the health services”
319 does not include the providing of ambulance service,
320 wellness centers or programs, adult day care or respite
321 care by acute care facilities.

322 (ii) “To develop”, when used in connection with health
323 services, means to undertake those activities which upon
324 their completion will result in the offer of a new institu-
325 tional health service or the incurring of a financial obliga-
326 tion in relation to the offering of such a service.

§16-2D-5. Powers and duties of state agency.

1 (a) The state agency shall administer the certificate of
2 need program as provided by this article.

3 (b) The state agency is responsible for coordinating and
4 developing the health planning research efforts of the state
5 and for amending and modifying the state health plan
6 which includes the certificate of need standards. The state
7 agency shall review the state health plan, including the
8 certificate of need standards and make any necessary

9 amendments and modifications. The state agency shall
10 also review the cost effectiveness of the certificate of need
11 program. The state agency may form task forces to assist
12 it in addressing these issues. The task forces shall be
13 composed of representatives of consumers, business,
14 providers, payers and state agencies.

15 (c) The state agency may seek advice and assistance of
16 other persons, organizations and other state agencies in
17 the performance of the state agency's responsibilities
18 under this article.

19 (d) For health services for which competition appropri-
20 ately allocates supply consistent with the state health
21 plan, the state agency shall, in the performance of its
22 functions under this article, give priority, where appropri-
23 ate to advance the purposes of quality assurance, cost
24 effectiveness and access, to actions which would
25 strengthen the effect of competition on the supply of the
26 services.

27 (e) For health services for which competition does not or
28 will not appropriately allocate supply consistent with the
29 state health plan, the state agency shall, in the exercise of
30 its functions under this article, take actions, where
31 appropriate to advance the purposes of quality assurance,
32 cost effectiveness and access and the other purposes of this
33 article, to allocate the supply of the services.

34 (f) Notwithstanding the provisions of section seven of
35 this article, the state agency may charge a fee for the filing
36 of any application, the filing of any notice in lieu of an
37 application, the filing of any exemption determination
38 request or the filing of any request for a declaratory
39 ruling. The fees charged may vary according to the type of
40 matter involved, the type of health service or facility
41 involved or the amount of capital expenditure involved:
42 *Provided*, That any fee charged pursuant to this subsection
43 may not exceed a dollar amount to be established by

44 procedural rule. The state agency shall evaluate and
45 amend any procedural rule promulgated prior to the
46 amendments to this subsection made during the 2009
47 regular session of the Legislature. The fees charged shall
48 be deposited into a special fund known as the Certificate
49 of Need Program Fund to be expended for the purposes of
50 this article.

51 (g) A hospital, nursing home or other health care facility
52 may not add any intermediate care or skilled nursing beds
53 to its current licensed bed complement. This prohibition
54 also applies to the conversion of acute care or other types
55 of beds to intermediate care or skilled nursing beds:
56 *Provided*, That hospitals eligible under the provisions of
57 section four-a of this article and subsection (i) of this
58 section may convert acute care beds to skilled nursing
59 beds in accordance with the provisions of these sections,
60 upon approval by the state agency. Furthermore, a
61 certificate of need may not be granted for the construction
62 or addition of any intermediate care or skilled nursing
63 beds except in the case of facilities designed to replace
64 existing beds in unsafe existing facilities. A health care
65 facility in receipt of a certificate of need for the construc-
66 tion or addition of intermediate care or skilled nursing
67 beds which was approved prior to the effective date of this
68 section shall incur an obligation for a capital expenditure
69 within twelve months of the date of issuance of the
70 certificate of need. Extensions may not be granted beyond
71 the twelve-month period. The state agency shall establish
72 a task force or utilize an existing task force to study the
73 need for additional nursing facility beds in this state. The
74 study shall include a review of the current moratorium on
75 the development of nursing facility beds; the exemption
76 for the conversion of acute care beds to skilled nursing
77 facility beds; the development of a methodology to assess
78 the need for additional nursing facility beds; and certifica-
79 tion of new beds both by Medicare and Medicaid. The task

80 force shall be composed of representatives of consumers,
81 business, providers, payers and government agencies.

82 (h) No additional intermediate care facility for individu-
83 als with an intellectual disability (ICF/ID) beds may be
84 granted a certificate of need, except that prohibition does
85 not apply to ICF/MR beds approved under the Kanawha
86 County Circuit Court order of August 3, 1989, civil action
87 number MISC-81-585 issued in the case of E.H. v. Matin,
88 168 W.V. 248, 284 S.E. 2d 232 (1981).

89 (i) Notwithstanding the provisions of subsection (g) of
90 this section and further notwithstanding the provisions of
91 subsection (b), section three of this article, an existing
92 acute care hospital may apply to the Health Care Author-
93 ity for a certificate of need to convert acute care beds to
94 skilled nursing beds: *Provided*, That the proposed skilled
95 nursing beds are Medicare-certified only: *Provided*,
96 *however*, That any hospital which converts acute care beds
97 to Medicare-certified only skilled nursing beds shall not
98 bill for any Medicaid reimbursement for any converted
99 beds. In converting beds, the hospital shall convert a
100 minimum of one acute care bed into one Medicare-certi-
101 fied only skilled nursing bed. The Health Care Authority
102 may require a hospital to convert up to and including
103 three acute care beds for each Medicare-certified only
104 skilled nursing bed: *Provided further*, That a hospital
105 designated or provisionally designated by the state agency
106 as a rural primary care hospital may convert up to thirty
107 beds to a distinct-part nursing facility, including skilled
108 nursing beds and intermediate care beds, on a one-for-one
109 basis if the rural primary care hospital is located in a
110 county without a certified freestanding nursing facility
111 and the hospital may bill for Medicaid reimbursement for
112 the converted beds: *And provided further*, That if the
113 hospital rejects the designation as a rural primary care
114 hospital, then the hospital may not bill for Medicaid

115 reimbursement. The Health Care Authority shall adopt
116 rules to implement this subsection which require that:

117 (1) All acute care beds converted shall be permanently
118 deleted from the hospital's acute care bed complement and
119 the hospital may not thereafter add, by conversion or
120 otherwise, acute care beds to its bed complement without
121 satisfying the requirements of subsection (b), section three
122 of this article for which purposes an addition, whether by
123 conversion or otherwise, shall be considered a substantial
124 change to the bed capacity of the hospital notwithstanding
125 the definition of that term found in subsection (ff), section
126 two of this article.

127 (2) The hospital shall meet all federal and state licensing
128 certification and operational requirements applicable to
129 nursing homes including a requirement that all skilled
130 care beds created under this subsection shall be located in
131 distinct-part, long-term care units.

132 (3) The hospital shall demonstrate a need for the project.

133 (4) The hospital shall use existing space for the
134 Medicare-certified only skilled nursing beds. Under no
135 circumstances shall the hospital construct, lease or acquire
136 additional space for purposes of this section.

137 (5) The hospital shall notify the acute care patient, prior
138 to discharge, of facilities with skilled nursing beds which
139 are located in or near the patient's county of residence.
140 Nothing in this subsection negatively affects the rights of
141 inspection and certification which are otherwise required
142 by federal law or regulations or by this code or duly
143 adopted rules of an authorized state entity.

144 (j) (1) Notwithstanding the provisions of subsection (g)
145 of this section, a retirement life care center with no skilled
146 nursing beds may apply to the Health Care Authority for
147 a certificate of need for up to sixty skilled nursing beds

148 provided the proposed skilled beds are Medicare-certified
149 only. On a statewide basis, a maximum of one hundred
150 eighty skilled beds which are Medicare-certified only may
151 be developed pursuant to this subsection. The state health
152 plan is not applicable to projects submitted under this
153 subsection. The Health Care Authority shall adopt rules
154 to implement this subsection which shall include a re-
155 quirement that:

156 (A) The one hundred eighty beds are to be distributed on
157 a statewide basis;

158 (B) There be a minimum of twenty beds and a maximum
159 of sixty beds in each approved unit;

160 (C) The unit developed by the retirement life care center
161 meets all federal and state licensing certification and
162 operational requirements applicable to nursing homes;

163 (D) The retirement center demonstrates a need for the
164 project;

165 (E) The retirement center offers personal care, home
166 health services and other lower levels of care to its resi-
167 dents; and

168 (F) The retirement center demonstrates both short- and
169 long-term financial feasibility.

170 (2) Nothing in this subsection negatively affects the
171 rights of inspection and certification which are otherwise
172 required by federal law or regulations or by this code or
173 duly adopted rules of an authorized state entity.

174 (k) The state agency may order a moratorium upon the
175 offering or development of a new institutional health
176 service when criteria and guidelines for evaluating the
177 need for the new institutional health service have not yet
178 been adopted or are obsolete. The state agency may also
179 order a moratorium on the offering or development of a

180 health service, notwithstanding the provisions of subdivi-
181 sion (5), subsection (b), section three of this article, when
182 it determines that the proliferation of the service may
183 cause an adverse impact on the cost of health care or the
184 health status of the public. A moratorium shall be de-
185 clared by a written order which shall detail the circum-
186 stances requiring the moratorium. Upon the adoption of
187 criteria for evaluating the need for the health service
188 affected by the moratorium, or one hundred eighty days
189 from the declaration of a moratorium, whichever is less,
190 the moratorium shall be declared to be over and applica-
191 tions for certificates of need are processed pursuant to
192 section six of this article.

193 (1) (1) The state agency shall coordinate the collection of
194 information needed to allow the state agency to develop
195 recommended modifications to certificate of need stan-
196 dards as required in this article. When the state agency
197 proposes amendments or modifications to the certificate
198 of need standards, it shall file with the Secretary of State,
199 for publication in the State Register, a notice of proposed
200 action, including the text of all proposed amendments and
201 modifications, and a date, time and place for receipt of
202 general public comment. To comply with the public
203 comment requirement of this section, the state agency may
204 hold a public hearing or schedule a public comment period
205 for the receipt of written statements or documents.

206 (2) When amending and modifying the certificate of need
207 standards, the state agency shall identify relevant criteria
208 contained in section six of this article or rules adopted
209 pursuant to section eight of this article and apply those
210 relevant criteria to the proposed new institutional health
211 service in a manner that promotes the public policy goals
212 and legislative findings contained in section one of this
213 article. In doing so, the state agency may consult with or
214 rely upon learned treatises in health planning, recommen-
215 dations and practices of other health planning agencies

216 and organizations, recommendations from consumers,
217 recommendations from health care providers, recommen-
218 dations from third-party payors, materials reflecting the
219 standard of care, the state agency's own developed exper-
220 tise in health planning, data accumulated by the state
221 agency or other local, state or federal agency or organiza-
222 tion and any other source deemed relevant to the certifi-
223 cate of need standards proposed for amendment or modifi-
224 cation.

225 (3) All proposed amendments and modifications to the
226 certificate of need standards, with a record of the public
227 hearing or written statements and documents received
228 pursuant to a public comment period, shall be presented to
229 the Governor. Within thirty days of receiving the pro-
230 posed amendments or modifications, the Governor shall
231 either approve or disapprove all or part of the amend-
232 ments and modifications and, for any portion of amend-
233 ments or modifications not approved, shall specify the
234 reason or reasons for nonapproval. Any portions of the
235 amendments or modifications not approved by the Gover-
236 nor may be revised and resubmitted.

237 (4) The certificate of need standards adopted pursuant to
238 this section which are applicable to the provisions of this
239 article are not subject to article three, chapter
240 twenty-nine-a of this code. The state agency shall follow
241 the provisions set forth in this subsection for giving notice
242 to the public of its actions, holding hearings or receiving
243 comments on the certificate of need standards. The
244 certificate of need standards in effect on November 29,
245 2005, and all prior versions promulgated and adopted in
246 accordance with the provisions of this section are and have
247 been in full force and effect from each of their respective
248 dates of approval by the Governor.

249 (m) The state agency may exempt from or expedite rate
250 review, certificate of need and annual assessment require-

251 ments and issue grants and loans to financially vulnerable
252 health care facilities located in underserved areas that the
253 state agency and the Office of Community and Rural
254 Health Services determine are collaborating with other
255 providers in the service area to provide cost effective
256 health care services.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-2. Definitions.

1 As used in this article:

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

6 (2) "Board" means the West Virginia Health Care
7 Authority.

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

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

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

39 (6) "Records" includes accounts, books, charts, con-
40 tracts, documents, files, maps, papers, profiles, reports,
41 annual and otherwise, schedules and any other fiscal data,
42 however recorded or stored.

**ARTICLE 50. MEDICATION ADMINISTRATION BY UNLICENSED PER-
SONNEL.**

§16-50-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context, the following definitions apply:

3 (a) "Administration of medication" means:

4 (1) Assisting a person in the ingestion, application or
5 inhalation of medications, including prescription drugs, or
6 in the use of universal precautions or rectal or vaginal
7 insertion of medication, according to the legibly written or
8 printed directions of the attending physician or authorized
9 practitioner, or as written on the prescription label; and

10 (2) Making a written record of such assistance with
11 regard to each medication administered, including the
12 time, route and amount taken: *Provided*, That for purposes
13 of this article, "administration" does not include judg-

14 ment, evaluation, assessments, injections of medication,
15 monitoring of medication or self-administration of
16 medications, including prescription drugs and
17 self-injection of medication by the resident.

18 (b) "Authorizing agency" means the department's Office
19 of Health Facility Licensure and Certification.

20 (c) "Department" means the Department of Health and
21 Human Resources.

22 (d) "Facility" means an ICF/ID, a personal care home,
23 residential board and care home, behavioral health group
24 home, private residence in which health care services are
25 provided under the supervision of a registered nurse or an
26 adult family care home that is licensed by or approved by
27 the department.

28 (e) "Facility staff member" means an individual em-
29 ployed by a facility but does not include a health care
30 professional acting within the scope of a professional
31 license or certificate.

32 (f) "Health care professional" means a medical doctor or
33 doctor of osteopathy, a podiatrist, registered nurse,
34 practical nurse, registered nurse practitioner, physician's
35 assistant, dentist, optometrist or respiratory care profes-
36 sional licensed under chapter thirty of this code.

37 (g) "ICF-ID" means an intermediate care facility for
38 individuals with an intellectual disability which is certi-
39 fied by the department.

40 (h) "Medication" means a drug, as defined in section one
41 hundred one, article one, chapter sixty-a of this code,
42 which has been prescribed by a duly authorized health
43 care professional to be ingested through the mouth,
44 applied to the outer skin, eye or ear, or applied through
45 nose drops, vaginal or rectal suppositories.

46 (i) "Registered professional nurse" means a person who
47 holds a valid license pursuant to article seven, chapter
48 thirty of this code.

49 (j) "Resident" means a resident of a facility.

50 (k) "Secretary" means the Secretary of the Department
51 of Health and Human Resources or his or her designee.

52 (l) "Self-administration of medication" means the act of
53 a resident, who is independently capable of reading and
54 understanding the labels of drugs ordered by a physician,
55 in opening and accessing prepackaged drug containers,
56 accurately identifying and taking the correct dosage of the
57 drugs as ordered by the physician, at the correct time and
58 under the correct circumstances.

59 (m) "Supervision of self-administration of medication"
60 means a personal service which includes reminding
61 residents to take medications, opening medication con-
62 tainers for residents, reading the medication label to
63 residents, observing residents while they take medication,
64 checking the self administered dosage against the label on
65 the container and reassuring residents that they have
66 obtained and are taking the dosage as prescribed.

**ARTICLE 22. DETECTION AND CONTROL OF PHENYLKETONURIA,
GALACTOSEMIA, HYPOTHYROIDISM, AND CERTAIN
OTHER DISEASES IN NEWBORN CHILDREN.**

§16-22-1. Findings.

1 The Legislature finds that phenylketonuria,
2 galactosemia, hypothyroidism, and certain other diseases
3 are usually associated with intellectual disability or other
4 severe health hazards. Laboratory tests are readily
5 available to aid in the detection of these diseases and
6 hazards to the health of those suffering from these diseases
7 may be lessened or prevented by early detection and
8 treatment. Damage from these diseases, if untreated in the

9 early months of life, is usually rapid and not appreciably
10 affected by treatment.

**§16-22-2. Program to combat intellectual disability or other
severe health hazards; rules; facilities for making
tests.**

1 The State Bureau of Public Health is authorized to
2 establish and carry out a program designed to combat
3 intellectual disability or other severe health hazards in our
4 state's population due to phenylketonuria, galactosemia,
5 hypothyroidism, and certain other diseases specified by
6 the State Public Health Commissioner, and may adopt
7 reasonable rules and regulations necessary to carry out
8 such a program. The Bureau of Public Health shall
9 establish and maintain facilities at its state hygienic
10 laboratory for testing specimens for the detection of
11 phenylketonuria, galactosemia, hypothyroidism, and
12 certain other diseases specified by the State Public Health
13 Commissioner. Tests shall be made by such laboratory of
14 specimens upon request by physicians, hospital medical
15 personnel and other individuals attending newborn
16 infants. The State Bureau of Public Health is authorized
17 to establish additional laboratories throughout the state to
18 perform tests for the detection of phenylketonuria,
19 galactosemia, hypothyroidism, and certain other diseases
20 specified by the State Public Health Commissioner.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-3. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) "Authority" means the West Virginia Hospital
4 Finance Authority created by section four of this article,
5 the duties, powers, responsibilities and functions of which
6 are specified in this article;

7 (2) "Board" means the West Virginia Hospital Finance
8 Board created by section four of this article, which shall
9 manage and control the authority;

10 (3) "Bond" means a revenue bond issued by the authority
11 to effect the purposes of this article;

12 (4) "Construction" means and includes new construction,
13 reconstruction, enlargement, improvement and providing
14 furnishings or equipment;

15 (5) "Direct provider of health care" means a person or
16 organization whose primary current activity is the provi-
17 sion of health care to individuals and includes a licensed
18 or certified physician, osteopath, dentist, nurse, podiatrist
19 or physician's assistant or an organization comprised of
20 these health professionals or employing these health
21 professionals;

22 (6) "Hospital" means a corporation, association, institu-
23 tion or establishment for the care of those who require
24 medical treatment, which may be a public or private
25 corporation or association, or state-owned or operated
26 establishment and specifically includes nursing homes
27 which are licensed under chapter sixteen of this code or
28 those facilities certified under the Social Security Act as
29 intermediate care facilities for individuals with an intel-
30 lectual disability;

31 (7) "Hospital facilities" means any real or personal
32 property suitable and intended for, or incidental or
33 ancillary to, use by a hospital and includes: Outpatient
34 clinics; laboratories; laundries; nurses', doctors' or interns'
35 residences; administration buildings; facilities for research
36 directly involved with hospital care; maintenance, storage
37 or utility facilities; parking lots and garages; and all
38 necessary, useful or related equipment, furnishings and
39 appurtenances and all lands necessary or convenient as a
40 site for the foregoing and specifically includes any capital

41 improvements to any of the foregoing. “Hospital facili-
42 ties” specifically includes office facilities not less than
43 eighty percent of which are intended for lease to direct
44 providers of health care and which are geographically or
45 functionally related to one or more other hospital facili-
46 ties, if the authority determines that the financing of the
47 office facilities is necessary to accomplish the purposes of
48 this article;

49 (8) “Hospital loan” means a loan made by the authority
50 to a hospital and specifically includes financings by the
51 authority for hospital facilities pursuant to lease-purchase
52 agreements, installment sale or other similar agreements;

53 (9) “Note” means a short-term promise to pay a specified
54 amount of money, payable and secured as provided
55 pursuant to this article and issued by the authority to
56 effect the purposes of this article;

57 (10) “Project costs” means the total of the reasonable or
58 necessary costs incurred for carrying out the works and
59 undertakings for the acquisition or construction of hospi-
60 tal facilities under this article. “Project costs” includes,
61 but is not limited to, all of the following costs: The costs of
62 acquisition or construction of the hospital facilities;
63 studies and surveys; plans, specifications, architectural
64 and engineering services; legal, organization, marketing or
65 other special services; financing, acquisition, demolition,
66 construction, equipping and site development of new and
67 rehabilitated buildings; rehabilitation, reconstruction,
68 repair or remodeling of existing buildings; interest and
69 carrying charges during construction and before full
70 earnings are achieved and operating expenses before full
71 earnings are achieved or a period of one year following the
72 completion of construction, whichever occurs first; and a
73 reasonable reserve for payment of principal of and interest
74 on bonds or notes of the authority. “Project costs” shall
75 also include reimbursement of a hospital for the foregoing

76 costs expended by a hospital from its own funds or from
77 money borrowed by the hospital for such purposes before
78 issuance and delivery of bonds or notes by the authority
79 for the purpose of providing funds to pay the project costs.
80 "Project costs" also specifically includes the refinancing
81 of any existing debt of a hospital necessary in order to
82 permit the hospital to borrow from the authority and give
83 adequate security for the hospital loan. The determination
84 of the authority with respect to the necessity of refinanc-
85 ing and adequate security for a hospital loan is conclusive;

86 (11) "Revenue" means any money or thing of value
87 collected by, or paid to, the authority as principal or of
88 interest, charges or other fees on hospital loans or any
89 other collections on hospital loans made by the authority
90 to hospitals to finance, in whole or in part, the acquisition
91 or construction of any hospital facilities or other money or
92 property which is received and may be expended for or
93 pledged as revenues pursuant to this article;

94 (12) "Veterans skilled nursing facility" means a skilled
95 nursing care facility constructed and operated to serve the
96 needs of veterans of the Armed Forces of the United States
97 who are citizens of this state.

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-7. Determination of incapacity.

1 (a) For the purposes of this article, a person may not be
2 presumed to be incapacitated merely by reason of ad-
3 vanced age or disability. With respect to a person who has
4 a diagnosis of mental illness or intellectual disability, such
5 a diagnosis is not a presumption that the person is inca-
6 pacitated. A determination that a person is incapacitated
7 shall be made by the attending physician, a qualified
8 physician, a qualified psychologist or an advanced nurse
9 practitioner who has personally examined the person.

10 (b) The determination of incapacity shall be recorded
 11 contemporaneously in the person's medical record by the
 12 attending physician, a qualified physician, advanced nurse
 13 practitioner or a qualified psychologist. The recording
 14 shall state the basis for the determination of incapacity,
 15 including the cause, nature and expected duration of the
 16 person's incapacity, if these are known.

17 (c) If the person is conscious, the attending physician
 18 shall inform the person that he or she has been determined
 19 to be incapacitated and that a medical power of attorney
 20 representative or surrogate decision-maker may be making
 21 decisions regarding life-prolonging intervention or mental
 22 health treatment for the person.

**§16-30-24. Need for a second opinion regarding incapacity for
 persons with psychiatric mental illness, intellec-
 tual disability or addiction.**

1 For persons with psychiatric mental illness, intellectual
 2 disability or addiction who have been determined by their
 3 attending physician or a qualified physician to be incapac-
 4 itated, a second opinion by a qualified physician or
 5 qualified psychologist that the person is incapacitated is
 6 required before the attending physician is authorized to
 7 select a surrogate. The requirement for a second opinion
 8 does not apply in those instances in which the medical
 9 treatment to be rendered is not for the person's psychiatric
 10 mental illness.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-3. Intellectual disability.

1 "Intellectual disability" means significantly subaverage
 2 intellectual functioning which manifests itself in a person
 3 during his or her developmental period and which is
 4 characterized by his or her inadequacy in adaptive behav-

5 ior. Notwithstanding any provision to the contrary, if any
6 service provision or reimbursement is affected by the
7 changes in terminology adopted in the 2010 First Extraor-
8 dinary Session of the Legislature, the terms “intellectual
9 disability” or “individuals with an intellectual disability”
10 shall assume their previous terminology. It is not the
11 intent of the Legislature to expand the class of individuals
12 affected by this terminology change.

§27-1-6. State hospital.

1 “State hospital” means any hospital, center or institu-
2 tion, or part of any hospital, center or institution, estab-
3 lished, maintained and operated by the Division of Health,
4 or by the Division of Health in conjunction with a political
5 subdivision of the state, to provide inpatient or outpatient
6 care and treatment for the mentally ill, intellectually
7 disabled or addicted. The terms “hospital” and “state
8 hospital” exclude correctional and regional jail facilities.

§27-1-7. Administrator and clinical director.

1 (a) The administrator of a state-operated treatment
2 facility is its chief executive officer and has the authority
3 to manage and administer the financial, business and
4 personnel affairs of such facility. All other persons
5 employed at the state-operated treatment facility
6 are under the jurisdiction and authority of the administra-
7 tor of the treatment facility who need not be a physician.

8 (b) The clinical director has the responsibility for
9 decisions involving clinical and medical treatment of
10 patients in a state-operated mental health facility. The
11 clinical director must be a physician duly licensed to
12 practice medicine in this state who has completed training
13 in an accredited program of post-graduate education in
14 psychiatry.

15 (c) In any facility designated by the Secretary of the
16 Department of Health and Human Resources as a facility

17 for individuals with an intellectual disability in which
18 programs and services are designed primarily to provide
19 education, training and rehabilitation rather than medical
20 or psychiatric treatment, the duties and responsibilities,
21 other than those directly related to medical treatment
22 services, assigned to the clinical director by this section or
23 elsewhere in this chapter, are assigned to and become the
24 responsibility of the administrator of that facility, or of a
25 person with expertise in the field of intellectual disability,
26 who need not be a physician, designated by the adminis-
27 trator.

§27-1-9. Mental health facility.

1 “Mental health facility” means any inpatient, residential
2 or outpatient facility for the care and treatment of the
3 mentally ill, intellectually disabled or addicted which is
4 operated, or licensed to operate, by the Department of
5 Health and Human Resources and includes state hospitals
6 as defined in section six of this article. The term also
7 includes veterans administration hospitals, but does not
8 include any regional jail, juvenile or adult correctional
9 facility, or juvenile detention facility.

ARTICLE 1A. DEPARTMENT OF HEALTH.

§27-1A-1. Statement of policy.

1 The purpose of this article is to improve the administra-
2 tion of the state hospitals, raise the standards of treatment
3 of the mentally ill and intellectually disabled in the state
4 hospitals, encourage the further development of outpatient
5 and diagnostic clinics, establish better research and
6 training programs, and promote the development of
7 mental health.

§27-1A-4. Powers and duties of the secretary.

1 In addition to the powers and duties set forth in any
2 other provision of this code, the Secretary of the Depart-

3 ment of Health and Human Resources has the following
4 powers and duties:

5 (a) To develop and maintain a state plan which sets forth
6 needs of the state in the areas of mental health and
7 intellectual disability; goals and objectives for meeting
8 those needs; plan of operation for achieving the stated
9 goals and objectives, including organizational structure;
10 and statement of requirements in personnel funds and
11 authority for achieving the goals and objectives.

12 (b) To appoint deputies and assistants to supervise the
13 departmental programs, including hospital and residential
14 services, and such other assistants and employees as may
15 be necessary for the efficient operation of the department
16 and all its programs.

17 (c) To promulgate rules clearly specifying the respective
18 duties and responsibilities of program directors and fiscal
19 administrators, making a clear distinction between the
20 respective functions of these officials.

21 (d) To delegate to any of his or her appointees, assistants
22 or employees all powers and duties vested in the commis-
23 sioner, including the power to execute contracts and
24 agreements in the name of the department as provided in
25 this article, but the commissioner shall be responsible for
26 the acts of such appointees, assistants and employees.

27 (e) To supervise and coordinate the operation of the state
28 hospitals named in article two of this chapter and any
29 other state hospitals, centers or institutions hereafter
30 created for the care and treatment of the mentally ill or
31 intellectually disabled, or both.

32 (f) To transfer a patient from any state hospital to any
33 other state hospital or clinic under his or her control and,
34 by agreement with the state Division of Corrections,
35 transfer a patient from a state hospital to an institution,

36 other than correctional, under the supervision of the state
37 Division of Corrections.

38 (g) To make periodic reports to the Governor and to the
39 Legislature on the condition of the state hospitals, centers
40 and institutions or on other matters within his or her
41 authority, which shall include recommendations for
42 improvement of any mental health facility and any other
43 matters affecting the mental health of the people of the
44 state.

45 The Secretary of the Department of Health and Human
46 Resources has all of the authority vested in the divisions of
47 the former Department of Mental Health, as hereinafter
48 provided.

49 The Secretary of the Department of Health and Human
50 Resources is hereby authorized and empowered to accept
51 and use for the benefit of a state hospital, center or
52 institution, or for any other mental health purpose speci-
53 fied in this chapter, any gift or devise of any property or
54 thing which lawfully may be given. If such a gift or devise
55 is for a specific purpose or for a particular state hospital,
56 center or institution, it shall be used as specified. Any gift
57 or devise of any property or thing which lawfully may be
58 given and whatever profit may arise from its use or
59 investment shall be deposited in a special revenue fund
60 with the State Treasurer, and shall be used only as speci-
61 fied by the donor or donors.

**§27-1A-6. Division of professional services; powers and duties
of supervisor; liaison with other state agencies.**

1 There is a Division of Professional Services established
2 in the Department of Mental Health. The supervisor of
3 this division shall assist the director in the operation of the
4 programs or services of the department and shall be a
5 qualified psychiatrist.

6 The supervisor of this division has the following powers
7 and duties:

8 (1) To develop professional standards, provide supervi-
9 sion of state hospitals, analyze hospital programs and
10 inspect individual hospitals.

11 (2) To assist in recruiting professional staff.

12 (3) To take primary responsibility for the education and
13 training of professional and subprofessional personnel.

14 (4) To carry on or stimulate research activities related to
15 medical and psychiatric facilities of the department, and
16 render specialized assistance to hospital superintendents.

17 (5) To establish liaison with appropriate state agencies
18 and with private groups interested in mental health,
19 including the state Bureau for Public Health, Division of
20 Corrections, the Department of Education, the Board of
21 Governors of West Virginia University, and the West
22 Virginia Association for Mental Health, Incorporated.

23 (6) To license, supervise and inspect any hospital, center
24 or institution, or part of any hospital, center or institution,
25 maintained and operated by any political subdivision or
26 by any person, persons, association or corporation to
27 provide inpatient care and treatment for the mentally ill,
28 or individuals with an intellectual disability, or both.

29 (7) To perform any other duties assigned to the division
30 by the Secretary of the Department of Health and Human
31 Resources.

ARTICLE 2. MENTAL HEALTH FACILITIES.

**§27-2-1. State hospitals and other facilities; transfer of control
and property from Department of Mental Health to
Department of Health and Human Resources; civil
service coverage.**

1 The state hospitals heretofore established at Weston,
2 Huntington and Lakin, are continued and known respec-
3 tively as the William R. Sharpe, Jr. Hospital, Mil-
4 dred-Mitchell Bateman Hospital and Lakin Hospital.
5 These state hospitals and centers are managed, directed
6 and controlled by the Department of Health and Human
7 Resources. Any person employed by the Department of
8 Mental Health who on the effective date of this article is
9 a classified civil service employee shall, within the limits
10 contained in section two, article six of chapter
11 twenty-nine of this code, remain in the civil service system
12 as a covered employee. The Secretary of the Department
13 of Health and Human Resources is authorized to bring the
14 state hospitals into structural compliance with appropri-
15 ate fire and health standards. All references in this code
16 or elsewhere in law to the "West Virginia Training School"
17 shall be taken and construed to mean and refer to the
18 "Colin Anderson Center."

19 The control of the property, records, and financial and
20 other affairs of state mental hospitals and other state
21 mental health facilities is transferred from the Depart-
22 ment of Mental Health to the Department of Health and
23 Human Resources. The secretary shall, in respect to the
24 control and management of the state hospitals and other
25 state mental health facilities, perform the same duties and
26 functions as were heretofore exercised or performed by the
27 Director of Health. The title to all property of the state
28 hospitals and other state facilities is transferred to and
29 vested in the Department of Health and Human Resources.

30 Notwithstanding any other provisions of this code to the
31 contrary, whenever in this code there is a reference to the
32 Department of Mental Health, it shall be construed to
33 mean and is a reference to the Secretary of the Depart-
34 ment of Health and Human Resources.

ARTICLE 2A. MENTAL HEALTH - INTELLECTUAL DISABILITY CENTERS.

§27-2A-1. Comprehensive community mental health-intellectual disability centers; establishment, operation and location; access to treatment.

1 (a) The Department of Health and Human Resources is
2 authorized and directed to establish, maintain and operate
3 comprehensive community mental health centers and
4 comprehensive intellectual disability facilities, at loca-
5 tions within the state that are determined by the secretary
6 in accordance with the state's comprehensive mental
7 health plan and the state's comprehensive intellectual
8 disability plan. Such facilities may be integrated with a
9 general health care or other facility or remain separate as
10 the Secretary of the Department of Health and Human
11 Resources may by rules prescribe: *Provided*, That nothing
12 contained herein may be construed to allow the Depart-
13 ment of Health and Human Resources to assume the
14 operation of comprehensive regional mental health centers
15 or comprehensive intellectual disability facilities which
16 have been heretofore established according to law and
17 which, as of the effective date of this article, are being
18 operated by local nonprofit organizations.

19 (b) Any new mental health centers and comprehensive
20 mental retardation facilities herein provided may be
21 operated and controlled by the Department of Health and
22 Human Resources or operated, maintained and controlled
23 by local nonprofit organizations and licensed according to
24 rules promulgated by the Secretary of the Department of
25 Health and Human Resources. All comprehensive regional
26 mental health and intellectual disability facilities licensed
27 in the state shall:

28 (1) Have a written plan for the provision of diagnostic,
29 treatment, supportive and aftercare services, and written
30 policies and procedures for implementing these services;

31 (2) Have sufficient employees appropriately qualified to
32 provide these services;

33 (3) Maintain accurate medical and other records for all
34 patients receiving services;

35 (4) Render outpatient services in the aftercare of any
36 patient discharged from an inpatient hospital, consistent
37 with the needs of the individual. No person who can be
38 treated as an outpatient at a community mental health
39 center may be admitted involuntarily into a state hospital.

40 (5) Have a chief administrative officer directly responsi-
41 ble to a legally constituted board of directors of a compre-
42 hensive mental health or intellectual disability facility
43 operated by a local nonprofit organization, or to the
44 Secretary of the Department of Health and Human
45 Resources if the comprehensive mental health or intellec-
46 tual disability center or facility is operated by the Depart-
47 ment of Health and Human Resources; and

48 (6) Have a written plan for the referral of patients for
49 evaluation and treatment for services not provided.

50 The state's share of costs of operating the facilities may
51 be provided from funds appropriated for this purpose
52 within the budget of the Department of Health and
53 Human Resources. The Secretary of the Department of
54 Health and Human Resources shall administer these funds
55 among all comprehensive mental health and intellectual
56 disability facilities that are required to best provide
57 comprehensive community mental health care and services
58 to the citizens of the state.

59 After July 1, but not later than August 1 of each year,
60 the chief administrative officer of each comprehensive
61 regional mental health center and intellectual disability
62 facility shall submit a report to the Secretary of the
63 Department of Health and Human Resources and to the
64 Legislative Auditor containing a listing of:

- 65 (1) All funds received by the center or facility;
- 66 (2) All funds expended by the center or facility;
- 67 (3) All funds obligated by the center or facility;
- 68 (4) All services provided by the center or facility;
- 69 (5) The number of persons served by the center or
70 facility; and
- 71 (6) Other information as the Secretary of the Depart-
72 ment of Health and Human Resources prescribes by
73 regulation.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-9. Rights of patients.

- 1 (a) No person may be deprived of any civil right solely by
2 reason of his or her receipt of services for mental illness,
3 intellectual disability or addiction, nor does the receipt of
4 the services modify or vary any civil right of the person,
5 including, but not limited to, civil service status and
6 appointment, the right to register for and to vote at
7 elections, the right to acquire and to dispose of property,
8 the right to execute instruments or rights relating to the
9 granting, forfeiture or denial of a license, permit, privilege
10 or benefit pursuant to any law, but a person who has been
11 adjudged incompetent pursuant to article eleven of this
12 chapter and who has not been restored to legal compe-
13 tency may be deprived of such rights. Involuntary com-
14 mitment pursuant to this article does not of itself relieve
15 the patient of legal capacity.
- 16 (b) Each patient of a mental health facility receiving
17 services from the facility shall receive care and treatment
18 that is suited to his or her needs and administered in a
19 skillful, safe and humane manner with full respect for his
20 or her dignity and personal integrity.

21 (c) Every patient has the following rights regardless of
22 adjudication of incompetency:

23 (1) Treatment by trained personnel;

24 (2) Careful and periodic psychiatric reevaluation no less
25 frequently than once every three months;

26 (3) Periodic physical examination by a physician no less
27 frequently than once every six months; and

28 (4) Treatment based on appropriate examination and
29 diagnosis by a staff member operating within the scope of
30 his or her professional license.

31 (d) The chief medical officer shall cause to be developed
32 within the clinical record of each patient a written treat-
33 ment plan based on initial medical and psychiatric exami-
34 nation not later than seven days after he or she is admitted
35 for treatment. The treatment plan shall be updated
36 periodically, consistent with reevaluation of the patient.
37 Failure to accord the patient the requisite periodic exami-
38 nations or treatment plan and reevaluations entitles the
39 patient to release.

40 (e) A clinical record shall be maintained at a mental
41 health facility for each patient treated by the facility. The
42 record shall contain information on all matters relating to
43 the admission, legal status, care and treatment of the
44 patient and shall include all pertinent documents relating
45 to the patient. Specifically, the record shall contain
46 results of periodic examinations, individualized treatment
47 programs, evaluations and reevaluations, orders for
48 treatment, orders for application for mechanical restraint
49 and accident reports, all signed by the personnel involved.

50 (f) Every patient, upon his or her admission to a hospital
51 and at any other reasonable time, shall be given a copy of
52 the rights afforded by this section.

53 (g) The Secretary of the Department of Health and
54 Human Resources shall propose rules for legislative
55 approval in accordance with the provisions of article
56 three, chapter twenty-nine-a of this code to protect the
57 personal rights of patients not inconsistent with this
58 section.

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License from director of health; regulations.

1 No hospital, center or institution, or part of any hospital,
2 center or institution, to provide inpatient, outpatient or
3 other service designed to contribute to the care and
4 treatment of the mentally ill or intellectually disabled, or
5 prevention of such disorders, may be established, main-
6 tained or operated by any political subdivision or by any
7 person, persons, association or corporation unless a license
8 therefor is first obtained from the Secretary of the Depart-
9 ment of Health and Human Resources. The application for
10 such license shall be accompanied by a plan of the pre-
11 mises to be occupied, and such other data and facts as the
12 secretary may require. The secretary may make such
13 terms and regulations in regard to the conduct of any
14 licensed hospital, center or institution, or part of any
15 licensed hospital, center or institution, as he or she thinks
16 proper and necessary. The secretary, or any person
17 authorized by the secretary has authority to investigate
18 and inspect any licensed hospital, center or institution, or
19 part of any licensed hospital, center or institution, and the
20 secretary may revoke the license of any hospital, center or
21 institution, or part of any hospital, center or institution,
22 for good cause after reasonable notice to the superinten-
23 dent or other person in charge of the hospital, center or
24 institution.

ARTICLE 12. OFFENSES.

**§27-12-1. Malicious making of medical certificate or com-
plaint as to mental condition.**

1 Any physician who signs a certificate respecting the
2 mental condition of any person without having made the
3 examination as provided by this chapter, or makes any
4 statement in any such certificate maliciously for the
5 purpose of having such person declared mentally ill,
6 intellectually disabled or an inebriate, and any person who
7 maliciously makes application to any circuit court or
8 mental hygiene commission for the purpose of having
9 another person declared mentally ill, intellectually
10 disabled, or an inebriate, is guilty of a misdemeanor and,
11 upon conviction thereof, shall be fined not exceeding \$500,
12 or imprisoned not exceeding one year, or both fined and
13 imprisoned at the discretion of the court.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 15. STATE COMMISSION ON INTELLECTUAL DISABILITY.

§29-15-1. Creation and composition.

1 There is created the State Commission on Intellectual
2 Disability hereinafter referred to as the commission.

3 Pursuant to subsection (g), section one, article two,
4 chapter five-f of this code, the commission created by this
5 section is now incorporated into and administered as part
6 of the Department of Health and Human Resources. All
7 references to the commission in this article shall be
8 construed to mean the Department of Health and Human
9 Resources.

§29-15-5. Purposes.

1 The Department of Health and Human Resources shall
2 take action to carry out the following purposes:

3 (a) Plan for and take other steps leading to comprehen-
4 sive state and community action to combat intellectual
5 disability.

6 (b) Determine what action is needed to combat intellec-
7 tual disability in the state and the resources available for
8 this purpose.

9 (c) Develop public awareness of the intellectual disabil-
10 ity problem and of the need for combating it.

11 (d) Coordinate state and local activities relating to the
12 various aspects of intellectual disability and its preven-
13 tion, treatment, or amelioration.

14 (e) Consult with and advise the Governor and Legisla-
15 ture on all aspects of intellectual disability.

16 (f) Consult with and advise state agencies, boards or
17 departments with intellectual disability responsibilities
18 relative to the effective discharge of such responsibilities.

**§29-15-6. State agency for federal intellectual disability pro-
gram.**

1 The Department of Health and Human Resources is
2 designated and established as the sole state agency for
3 receiving appropriations under and carrying out the
4 purposes of section five of Public Law 88-156,
5 eighty-eighth Congress approved October 24, 1963, and
6 any law amending, revising, supplementing or superseding
7 section five of said Public Law 88-156.

8 The department constitutes the designated state agency
9 for handling all programs of the federal government
10 relating to intellectual disability requiring action within
11 the state which are not the specific responsibility of
12 another state agency under the provisions of federal law,
13 rules or regulations, or which have not been specifically
14 entrusted to another state agency by the Legislature.

**CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP
AND CONSERVATORSHIP ACT.**

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-1. Short title and legislative findings.

1 This chapter is known and may be cited as the “West
2 Virginia Guardianship and Conservatorship Act.”

3 The Legislature finds that section six, article eight of the
4 Constitution of the State of West Virginia gives it the
5 discretionary authority to pass legislation which “...pro-
6 vides that all matters of probate, the appointment and
7 qualification of personal representatives, guardians,
8 committees and curators, and the settlements of their
9 accounts...” be under the exclusive jurisdiction of circuit
10 courts. The Legislature further finds and declares that the
11 use of the word “all” does not require an interpretation
12 that the Legislature must place every aspect of such
13 matters with circuit courts, but, that because of the
14 discretionary authority given, the Legislature may trans-
15 fer, from time to time, only those matters which it believes
16 would be better served under the jurisdiction of circuit
17 courts.

18 The Legislature further finds and declares that legal
19 proceedings requiring a tribunal to determine whether
20 persons should be appointed to manage the personal or
21 financial affairs of individuals deemed mentally incompe-
22 tent, intellectually disabled, mentally handicapped or
23 missing involve considerations of constitutionally pro-
24 tected rights which can best be resolved within the circuit
25 courts of this state.

§44A-1-2. Determinations and appointments under prior law.

1 (a) Any person determined to be “mentally incompe-
2 tent”, “intellectually disabled” or “mentally handicapped”
3 and for such reason deemed to be in need of a guardian or
4 committee pursuant to any order entered and in effect
5 before the effective date of this chapter is deemed to be a
6 “protected person” within the meaning of this chapter,
7 after its effective date, unless any such determination be
8 revoked or otherwise modified.

9 (b) Any person heretofore appointed to serve as a
10 committee for an incompetent person and any person
11 appointed to serve as a guardian for an individual with an
12 intellectual disability or for a mentally handicapped
13 person, is, as of the effective date of this chapter, deemed
14 to be: (1) A guardian, within the meaning of this chapter,
15 if the order appointing such person provides that the
16 person so appointed has responsibility only for the per-
17 sonal affairs of a mentally incompetent, intellectually
18 disabled or mentally handicapped person; (2) a conserva-
19 tor, within the meaning of this chapter, if the order
20 appointing such person provides that the person so
21 appointed had responsibility only for managing the estate
22 and financial affairs of a mentally incompetent intellectu-
23 ally disabled or mentally handicapped person; or (3) a
24 guardian and a conservator, within the meaning of this
25 chapter, if the order appointing such person does not set
26 forth limitations of responsibility for both the personal
27 affairs and the financial affairs of a mentally incompetent
28 intellectually disabled, or mentally handicapped person.

29 (c) After the effective date of this chapter, the circuit
30 courts have exclusive jurisdiction of all matters involving
31 determinations of mental incompetency, intellectual
32 disability or mental handicap, including the jurisdiction of
33 any proceedings pending as of that effective date. All
34 orders entered before the effective date of this chapter in
35 those cases shall remain in full force and effect until
36 terminated, revoked or modified as provided herein.

37 (d) All persons heretofore appointed to serve as a
38 committee or as a guardian retain their authority, powers
39 and duties in that capacity, except to the extent that their
40 authority, powers and duties as guardian or conservator
41 under the provisions of this chapter are more specifically
42 enumerated, in which event the committee or guardian has
43 the authority, powers and duties so enumerated.

44 Wherever in the Constitution, the Code of West Virginia,
45 Acts of the Legislature or elsewhere in law a reference is
46 made to a committee for an incompetent person, such
47 reference shall be read, construed and understood to mean
48 guardian and/or conservator as defined in this chapter.

49 (e) The provisions of this chapter providing for the
50 presentation of reports by guardians and the presentation
51 of accountings by conservators may not be retroactively
52 applied, and applicable law in effect before the effective
53 date of this chapter controls as to any reports or
54 accountings to be made or filed for any period before the
55 effective date of this chapter.

56 (f) As used in this section, "prior law" refers to article
57 eleven, chapter twenty-seven of this code, relating to the
58 appointment of committees for mentally incompetent
59 persons, and to article ten-a, chapter forty-four, relating
60 to the appointment of guardians for individuals with an
61 intellectual disability and mentally handicapped persons,
62 as those articles were in effect before the effective date of
63 this chapter.

CHAPTER 49. CHILD WELFARE.

ARTICLE 4A. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

§49-4A-6. Regional and state family support councils.

1 (a) Each regional family support agency shall establish
2 a regional family support council comprised of at least
3 seven members, of whom at least a majority shall be
4 persons with developmental disabilities or their parents or
5 primary caregivers. Each regional family support council
6 shall meet at least quarterly to advise the regional family
7 support agency on matters related to local implementation
8 of the family support program and to communicate
9 information and recommendations regarding the family
10 support program to the state Family Support Council.

11 (b) The Secretary of the Department of Health and
12 Human Resources shall appoint a state Family Support
13 Council comprised of at least twenty-two members, of
14 whom at least a majority shall be persons with develop-
15 mental disabilities or their parents or primary caregivers.
16 A representative elected by each regional council shall
17 serve on the state council. The state council shall also
18 include a representative from each of the following
19 agencies: The state Developmental Disabilities Council,
20 the state Protection and Advocacy Agency, the Center for
21 Excellence in Disabilities, the Office of Special Education,
22 the Behavioral Health Care Providers Association and the
23 Early Intervention Interagency Coordinating Council.

24 (c) The state council shall meet at least quarterly. The
25 state council will participate in the development of
26 program policies and procedures, annual contracts and
27 perform such other duties as are necessary for statewide
28 implementation of the family support program.

29 (d) Members of the state and regional councils who are
30 a member of the family or the primary caregiver of a
31 developmentally disabled person shall be reimbursed for
32 travel and lodging expenses incurred in attending official
33 meetings of their councils. Child care expenses related to
34 the developmentally disabled person shall also be reim-
35 bursed. Members of regional councils who are eligible for
36 expense reimbursement shall be reimbursed by their
37 respective regional family support agencies.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

.....
Chairman Senate Committee

[Handwritten Signature]

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]

.....
Clerk of the Senate

[Handwritten Signature]

.....
Clerk of the House of Delegates

[Handwritten Signature]

.....
President of the Senate

[Handwritten Signature]

.....
Speaker House of Delegates

The within *is appended* this the *3rd*
Day of *June*, 2010.

[Handwritten Signature]

.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 21 2010

Time 3:25 pm